Supreme Court, U.S.
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No. 02-

IN THE

# Supreme Court of the United States

YVONNE CRYNS,

*Petitioner,*

*v.*

THE PEOPLE OF THE STATE OF ILLINOIS *ex rel.* ROBERT E. HEWSON, JR., Director of Professional Regulation,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF ILLINOIS

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Whether the Illinois Nursing and Advanced Practice Nursing Act violates the First and Fourteenth Amendments because it prohibits any person other than a licensed nurse from "engaging in conduct aimed at promoting, maintaining, and restoring health."

2. Whether the Illinois Nursing and Advanced Practice Nursing Act violates the Fourteenth Amendment because it prohibits any person other than a licensed nurse from "assessing healthcare needs."

3. Whether the Illinois Nursing and Advanced Practice Nursing Act violates the First and Fourteenth Amendments because it prohibits any person other than a licensed nurse from "providing counseling and health education."

4. Whether the Illinois Nursing and Advanced Practice Nursing Act violates the Fourteenth Amendment because it prohibits any person other than a licensed nurse from "using corrective measures to improve health status" during an emergency.

## PARTIES TO THE PROCEEDING

Robert E. Hewson, Jr., Acting Director of the Illinois Department of Professional Regulation, replaced former Director of the Illinois Department of Professional Regulation, Leonard A. Sherman, and has been substituted in the caption of the case.

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## OPINIONS BELOW

The opinion of the Supreme Court of Illinois in *The People of the State of Illinois ex rel. v. Yvonne Cryns*, Docket No. 93412 is attached as Appendix A. The opinion of the Appellate Court of Illinois for the Second District in *The People of the State of Illinois ex rel. v. Yvonne Cryns* is attached as Appendix B. Excerpts of the transcript of hearing before Judge Michael J. Sullivan dated October 13, 2000 is attached as Appendix C.

## STATEMENT OF JURISDICTION

The instant Petition for Writ of Certiorari seeks review by the United States Supreme Court of the final judgment of the State of Illinois Supreme Court, entered on February 21, 2003, wherein the Illinois Supreme Court interpreted the Illinois Nursing and Advanced Practice Nursing Act in a manner repugnant to the United States Constitution.

The jurisdiction of this Court is invoked under 28 U.S.C.A. § 1257(a).

## STATUTES INVOLVED

The relevant part of the Nursing and Advanced Practice Nursing Act (NAPNA), 225 ILCS 65/5-1 *et seq.*, is attached as Appendix D.

## STATEMENT OF THE CASE

After Heather Verzi became pregnant, she and her husband Louis Verzi decided that they wanted to deliver their child at their home. The Verzis held the belief that childbirth is a natural human process, not a medical process, and because of their beliefs they chose to deliver their baby in the privacy of their own home, without the aid of a doctor or nurse. The Verzis' alternative theories on health care included reliance on Heather's mother as their "doctor," although she was not a medical doctor. Throughout Heather's pregnancy, the Verzis relied upon Heather's mother for advice concerning Heather's health.

After researching natural childbirth alternatives, and undergoing a "Bradley Method" course on natural childbirth, the Verzis decided that they wanted to attempt a "water birth," a procedure in which the laboring mother is partially submerged in a pool of water during labor. Because the procedure was not available at hospitals, the Verzis sought a traditional midwife to assist them and to attend their home birth. In January of 2000, the Verzis met Yvonne Cryns, a self-employed traditional (non-nurse) midwife. Traditional (lay) midwifery is an unregulated employment activity in the State of Illinois. The Verzis hired Yvonne as their midwife to give them advice and to assist them with things they didn't know concerning the birth of their child. The Verzis chose Yvonne because she held similar beliefs to their own concerning natural childbirth and home birth.

After choosing Yvonne Cryns to be their midwife and to assist them during the home birth of their child, the Verzis had several meeting with Yvonne Cryns prior to Heather's due date. During their visits, Cryns used sound-amplifying devices to hear the baby's heartbeat. Cryns never held herself

out as anything other than a traditional midwife and specifically told the Verzis that she was not there to act as a nurse or a doctor. Cryns explained, and the Verzis understood, that in a home-birth setting, immediate medical care would not be available.

On August 19, 2000, at approximately 10:30 a.m. Heather Verzi went into labor. Yvonne was subsequently called to the Verzi's home and arrived around 1:30 p.m. Periodically during Heather's labor, Yvonne also used a Doppler and a fetoscope to listen for the baby's heartbeat. On one such occasion, Yvonne could not hear the baby's heartbeat. At that point, the circumstances became exigent and Yvonne assisted Heather to get the baby born. When the baby was born, he was not breathing and did not have a detectable heartbeat. Cryns began administering neonatal CPR and used an Ambu bag to provide ventilation. Cryns attempted to resuscitate the baby for approximately 10 minutes stopping every minute or so to listen for the baby's heartbeat. When the resuscitation efforts were not successful, 911 was called.

## PROCEDURAL HISTORY

The case came before the trial court on the State's motion for preliminary injunctive relief to enjoin Yvonne Cryns from engaging in the practice of nursing and/or midwifery in the state of Illinois. During the evidentiary hearing the State elicited testimony from Louis Verzi and moved for admission of a videotape of the birth. The trial court admitted the videotape into evidence overruling Cryns objection based on foundation. However, the trial court went on to grant Cryns' motion for a directed verdict, finding that the State did not establish a *prima facie* case of a violation of the Nursing and Advanced Practice Nursing Act. (*See* Appendix C).

On the State's first appeal, the Appellate Court Second District remanded the case to the trial court with instructions for the court to re-rule after the court considered the videotape evidence. The trial court dutifully reviewed the videotape evidence but came to the same conclusion concerning the motion for directed verdict, finding again in favor of Yvonne Cryns.

On the State's second appeal, the Appellate Court Second District reversed the decision of the trial court in favor of Cryns and found *from the videotape evidence* that the State had established a *prima facie* case. (*See* Appendix B). Thereafter, Yvonne Cryns filed a Petition for Leave to Appeal with the Illinois Supreme Court seeking review of the Appellate Court's decision. Cryns' Petition for Leave to Appeal was allowed.

On appeal, the Supreme Court sustained Cryns' foundational objection to the admission of the videotape evidence, finding that the videotape evidence was improperly allowed into evidence. However, the Court went on to find, solely from the testimony of Louis Verzi, that Cryns' assistance to the Verzis during Heather's pregnancy and at the Verzis' home during the birth of their child, was in violation of the Illinois Nursing and Advanced Practice Nursing Act. The Court also found that, notwithstanding the exigent circumstances of the child's complete respiratory and cardiac distress, by performing cardio pulmonary resuscitation on the child, Cryns also violated the Act. (*See* Appendix A).

## STANDARD OF REVIEW

Determining the constitutionality of a statute is a question of law reviewable *de novo*. *Pierce v. Underwood*, 487 U.S. 552, 558 (1988).

## SUMMARY OF THE ARGUMENT

The Illinois Supreme Court's application of the Illinois Nursing and Advanced Practice Nursing Act, 225 ILCS 65/5-1 *et seq.*, (hereinafter "NAPNA"), to the facts of Yvonne Cryns' case resulted in violations of Cryns' constitutional rights under the First and Fourteenth Amendments. The NAPNA is unconstitutionally overbroad on its face because it interferes with First Amendment protections and fails to distinguish between conduct that may be proscribed and conduct that must be permitted. The NAPNA is also unconstitutionally vague because it does not give a person of ordinary intelligence a reasonable opportunity to what conduct the statute prohibits, so that she may act accordingly, and because the NAPNA was arbitrarily and discriminatorily enforced.

## ARGUMENT

### I. The Illinois Nursing and Advanced Practice Nursing Act Violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

> . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the law.

U.S. CONST., amend. XIV, § 1.

Freedom in the making of contracts of personal employment, by which labor and other services are exchanged for money or other forms of property, is an elemental part of the rights of personal liberty and private property protected by the due process clause of the Fourteenth Amendment. *Prudential Ins. Co. of America v. Cheek*, 259 U.S. 530 (1922). Likewise, the right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the "liberty" and "property" concepts of provisions of the Fifth [and Fourteenth] Amendment[s] to the Federal Constitution that no person shall be denied liberty or property without due process of law. *See Greene v. McElroy*, 360 U.S. 474 (1959); *United States v. Robel*, 389 U.S. 258 (1967). The State cannot arbitrarily interfere with private business or prohibit or unreasonably restrict lawful occupations. *New State Ice Co. v. Liebman*, 285 U.S. 262 (1932). Consequently, Yvonne Cryns had a liberty and property interest in her unregulated employment as a traditional midwife.

Nevertheless, the Illinois Supreme Court's ruling effectively deprived Cryns of her liberty interest in her chosen profession and of her property interest in her continued employment as a traditional midwife.

### A. The Nursing and Advanced Practice Nursing Act is Unconstitutionally Overbroad

Imprecise laws can be attacked on their face under two different doctrines. *Chicago v. Morales*, 527 U.S. 41, 52 (1999). The overbreadth doctrine permits the facial invalidation of laws that inhibit the exercise of First Amendment rights if the impermissible applications of the law are substantial when judged in relation to the statute's plainly legitimate sweep. *Id.*

In the case at bar, the NAPNA is unconstitutionally overbroad. NAPNA prohibits *inter alia* "assessment of healthcare needs," "the promotion, maintenance, and restoration of health," "counseling" and "health education," by anyone other than a licensed nurse. App. D-67a. Because the statute involves conduct and not merely speech, the overbreadth of the statute must not only be real, but substantial as well, judged in relationship to the statute's plainly legitimate sweep. *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973). However, notwithstanding the permissible goals of the NAPNA, its prohibitions are far too broad in their sweep. The Act fails to distinguish between conduct that may be proscribed and conduct that must be permitted.

Many lawful activities and occupations in Illinois involve the "assessment of healthcare needs;" i.e. feeling for a fever on a child's forehead, recommending and selling health foods, commercial vitamin production and sales, and physical

fitness training programs. Likewise, the list of lawful activities and occupations encompassing the "promotion, maintenance, and restoration of health" is significant and includes i.e. diet aids and literature, CPR classes, fitness training, etc.

The Fourteenth Amendment forbids the government to infringe . . . fundamental liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest. *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). In the case at bar, NAPNA is not narrowly tailored to accomplish the state's legitimate interests and instead ensnares lawful and prohibited conduct in the same dragnet.

When the law in Illinois makes it a civil and criminal offense for anyone other than a nurse to promote, maintain, and restore health, such a statute should be struck down as repugnant to the Constitution. The Illinois Supreme Court's ruling, ironically in the name of public health and welfare, does nothing but undermine the promotion, maintenance and restoration of public health in the state of Illinois.

## I. The Illinois Supreme Court's Interpretation of the Nursing and Advanced Practice Nursing Act Deprived Yvonne Cryns of Her Rights Under the First Amendment to the United States Constitution.

### a. First Amendment Right of Association

In *Roberts v. United States Jaycees*, 468 U.S. 609, 618-619 (1984), the Supreme Court held that there are two types of "freedom of association." The first type of freedom

of association requires that certain intimate human relationships must be secured against undue intrusion by the State because of the role of such relationships in safeguarding the individual freedom that is central to our constitutional scheme. *Id.* The Court further clarified the first type of freedom of association as being a "fundamental element of personal liberty." *Id.* The second type of freedom of association recognizes a right to associate for the purpose of engaging in those activities protected by the First Amendment such as; speech, assembly, petition for the redress of grievances, and the exercise of religion. *Id.* The Court held that, "when the State interferes with individuals' selection of those with whom they wish to join in a common endeavor, freedom of association in both of its forms may be implicated." *Id.*

The Verzis chose Yvonne Cryns to join them in one of the most intimate moments in their life, the birth of their child in their home. Yvonne chose to associate with the Verzis as their midwife during Heather's pregnancy, labor, and childbirth. Such an intimate relationship and common endeavor must be secured against undue intrusion by the State in order to safeguard an individual's freedom of association. Given the intimate nature of the common endeavor that bonds expectant parents and a traditional midwife, the State must not be allowed to interfere with the freedom of association underlying that relationship.

The Supreme Court has long recognized that the Bill of Rights, in order to "secure individual liberty," must afford protection from unjustified governmental interference to "certain kinds of highly personal relationships." *Roberts*, 468 U.S. at 618. Most obvious among those relationships are those that involve family bonds, such as marriage,

procreation, education, and cohabitation with relatives. *Board of Directors of Rotary International, et al. v. Rotary Club of Duarte et al.*, 481 U.S. 537 (1987). The Supreme Court has not held that constitutional protection of the freedom of association applies only to family relationships. *Id.* at 545. In fact, the Supreme Court in *Roberts v. United States Jaycees*, 468 U.S. at 619-620, stated that the First Amendment protects those relationships that, "involve deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life." "Certain bonds" play, "a critical role in the culture and traditions of the Nation by cultivating and transmitting shared ideals and beliefs," which in turn, "foster diversity and act as critical buffers between the individual and the power of the State." *Id.* at 618-619.

The Verzis had come to trust Yvonne Cryns and felt strongly that she was the person they wanted to assist them during the birth of their child. Their deep attachment and commitment to Yvonne Cryns was demonstrated by their sharing the experience of the home birth of their child with Yvonne. The relationship between Yvonne and the Verzis must be afforded constitutional protection.

The bond between Yvonne and the Verzis also plays a critical role of the culture and traditions of midwifery in the Nation by cultivating and transmitting shared ideals and beliefs about home birth and natural childbirth, which fosters diversity. The purpose of protecting these bonds is central to any concept of liberty and allows individuals to, "define one's identity." *Id.* at 619. The State must not be allowed to interfere with the intimate bond between expectant parents and a traditional midwife by statutory inference.

The Supreme Court has held that only relationships with such attributes as, "relative smallness, a high degree of selectivity in decisions to begin and maintain the affiliation, and seclusion from others in critical aspects of the relationship," lead to an understanding of freedom of association as an intrinsic element of personal liberty. *Id.* at 620. In determining the limits of State authority with regards to a particular type of association, the Court must assess "where that relationship's objective characteristics locate it on a spectrum from the most intimate to the most attenuated of personal attachments." *Rotary International*, 481 U.S. at 546. The relevant factors to this assessment include "size, purpose, policies, selectivity, congeniality, and other characteristics that in a particular case may be pertinent." *Roberts*, 468 U.S. at 620.

In the instant case, the Verzis chose Yvonne to assist them with the birth of their child in their bedroom, in their home; the attendant group was very small. The Verzis and Yvonne held the same beliefs with regard to natural childbirth and home birth without a nurse or doctor present. The Verzis also specifically excluded others, including nurses and doctors, from participating in their home birth experience. Clearly the intimate relationship between the Verzis and Yvonne enjoys constitutional protection because sharing the birth experience of their child is one of the most intimate of personal attachments.

The State should not be permitted to regulate the Verzis' or Yvonne's right to an intimate relationship by applying the Nursing and Advanced Practice Nursing Act to demolish their relationship merely because Yvonne is not a licensed nurse. Yvonne Cryns was engaged in a lawful, unregulated employment activity as a traditional midwife and the Court

should protect her First Amendment constitutional right of intimate association based on the decisions in *Rotary International* and *Roberts*.

The Due Process clause specially protects those fundamental rights and liberties which are objectively deeply rooted in this Nation's history and tradition. *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997). The history of traditional midwives assisting mothers at childbirth dates back to Biblical times. The rights of association that exist between a traditional midwife and expectant parents during pregnancy and childbirth are deeply rooted in American and Illinois' culture and history. One cannot acknowledge the right of association between midwives and mothers at childbirth without equally acknowledging the midwife's liberty interest in providing assistance to mothers during childbirth. The two fundamental rights and liberties are inextricably intertwined. Consequently, the right of association between midwife and client(s) and the liberty interest in employment as a traditional midwife should be entitled to protection under the Due Process Clause of the Fourteenth Amendment as a fundamental right.

**b. First Amendment Right to Free Speech**

The government has no power under the First Amendment to restrict expression because of its message, its ideas, its subject matter or its content. *Police Department of the City of Chicago v. Mosley*, 408 U.S. 92, 95 (1972). The hallmark of the protection of free speech is to allow free trade in ideas, even ideas that the overwhelming majority of people might find distasteful or discomforting. *Virginia v. Black*, 123 S. Ct. 1536, 1547 (2003). The First Amendment ordinarily denies a State the power to prohibit dissemination

of social, economic and political doctrine which a vast majority of its citizens believes to be false and fraught with evil consequence. *Id.* at 1547.

The Verzis and Yvonne Cryns' shared a common belief in the natural childbirth process and in home birth without the assistance of a nurse or doctor; their exchange of ideas in that regard is protected by their First Amendment right of free speech. Although the majority of citizens may prefer a hospital setting in which to give birth, under the Constitution, the Verzis and Yvonne are permitted to freely exchange their ideas concerning natural childbirth and home birth, even though the majority of people might find such ideas distasteful or discomforting. The State has no authority to prohibit the dissemination of ideas and information encompassing a belief in natural childbirth and in home birth, in favor of a majority opinion to the contrary.

The NAPNA's prohibition against "counseling" and "health education," by traditional non-nurse midwives, is undermined by permitting "counseling" and "health education" activities by other non-nurses. The disparate application of the NAPNA to traditional midwives, and not to other non-nurses who render counseling and health education services without a nursing license, leads to the conclusion that the NAPNA is being deployed in this instance based upon the content of the information exchanged concerning natural childbirth and home birth. However, content-based regulations are presumptively invalid under the First Amendment. *R.A.V. v. City of St. Paul, Minnesota*, 505 U.S. 377 (1992). When the Illinois Supreme Court held that Yvonne Cryns violated the Nursing and Advanced Practice Nursing Act by providing counseling and health education to the Verzis, it violated her First Amendment right to free speech.

## B. The Nursing and Advanced Practice Nursing Act is Unconstitutionally Vague

Even if an enactment does not reach a substantial amount of constitutionally protected conduct, it may be impermissibly vague because it fails to establish standards for the police and public that are sufficient to guard against the arbitrary deprivation of liberty interests. *Chicago v. Morales*, 527 U.S. at 52 (1999). A statute can be impermissibly vague for either of two independent reasons. First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. *Chicago v. Morales*, 527 U.S. 41, 56-57 (1999). Second, if it authorizes or even encourages arbitrary and discriminatory enforcement. *Id.* The NAPNA fails on both counts.

### I. The Nursing and Advanced Practice Nursing Act Fails to Provide Adequate Notice of the Conduct it Prohibits

The NAPNA does not expressly prohibit giving advice to expectant parents about home birth and natural childbirth, or helping expectant parents through the birth of their first child. NAPNA does not expressly prohibit listening to a heartbeat with a stethoscope, fetoscope, Doppler, or any other sound amplifier. NAPNA does not expressly prohibit the use of cardio-pulmonary resuscitation on an infant in cardiac distress during an emergency. Because the statute does not expressly prohibit these acts, the Illinois Supreme Court had to interpret the statute to apply to Cryns.

The Illinois Supreme Court found that Yvonne Cryns violated the NAPNA 1) by meeting with expectant parents during a pregnancy and advising them concerning home birth

and natural childbirth, 2) by attending the childbirth and helping the expectant parents through the birth of their first child, 3) by listening to a baby's heartbeat *in utero* with the aid of a sound amplifier, and 4) by administering cardio pulmonary resuscitation (CPR) to a baby in cardiac distress during an emergency.

It is a basic principle of due process that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). Vague laws may trap the innocent by not providing fair warning. *Id.* A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates due process of law. *Bouie v. City of Columbia*, 378 U.S. 347, 351 (1964). No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. *Id.* All are entitled to be informed as to what the State commands or forbids. *Id.*

In the case at bar, the relevant provisions of NAPNA are too vague to provide adequate notice to persons of ordinary intelligence that 1) consulting with expectant parents concerning home birth and natural childbirth is a violation of the Act, or 2) that listening to a heartbeat is a violation of the Act, or 3) that attending a home birth and helping the expectant parents through the birth of their child is a violation of the Act. (*See* Appendix D).

## II. The Nursing and Advanced Practice Nursing Act Encourages Arbitrary Deprivation of Liberty Interests

The relevant provisions of the NAPNA were arbitrarily and discriminatorily enforced against Yvonne Cryns, and not against others who are similarly situated. The conduct that constitutes proscribed "counseling" and "health education" is undefined in the NAPNA. Cryns was found to have provided "counseling" and "health education" in violation of the NAPNA because she is not a licensed nurse in the State of Illinois. However, the State of Illinois allows health education classes in public schools to be taught by non-nurses without their satisfying the requirements for licensure under the NAPNA. Likewise, private courses on natural childbirth offer counseling to expectant parents concerning childbirth, and provide health education concerning labor and delivery, yet the State permits private counseling and health education by non-nurses in these instances as well. Finally, Cryns was found to have violated NAPNA by performing cardio pulmonary resuscitation on an infant in cardiac distress during an emergency, however, cardio pulmonary resuscitation is taught by many non-nurses through the American Red Cross, without attaining prerequisite nursing licensure.

The Illinois Supreme Court randomly and discriminatorily refused Yvonne Cryns the benefits of the emergency exception in the NAPNA, despite its obvious applicability to the facts at bar. Because the NAPNA encourages the arbitrary deprivation of protected liberty interests and discriminatory enforcement, it is unconstitutionally vague.

## CONCLUSION

Illinois law makes it a criminal and civil offense for anyone other than a nurse to promote, maintain, and restore health, to assess healthcare needs, and to take corrective measures to improve health status. Illinois law also makes it a criminal and civil offense for anyone other than a nurse to administer cardio-pulmonary resuscitation to an infant in cardiac and respiratory distress during an emergency. Illinois enacted said legislation in the name of public health.

The Illinois Supreme Court made its decision based upon the Court's disfavor of traditional midwifery and home birth. In its closing comments the Court tellingly states "Although we understand plaintiff's [the State's] concerns with respect to the continued existence of lay midwifery in Illinois, we are constrained to apply the law as enacted by the General Assembly." App. A-36a. "If the statute as enacted seems to operate in certain cases unjustly or inappropriately, the appeal must be to the General Assembly, and not to the Court." *Id.* Yvonne Cryns respectfully disagrees. When a State statute operates to unjustly deprive citizens of their constitutional rights, resort to the United States Supreme Court is proper.

Although the Illinois Supreme Court recognized the legal existence of traditional midwives, it did not consider Yvonne Cryns' constitutional rights when it applied the NAPNA to her unregulated employment activities. The right to attend a home birth and the right to practice the teachings of natural childbirth, are fundamental rights centering on the First Amendment right of association and right to free speech. The right to engage in unregulated employment activities is also a fundamental right stemming from the Fourteenth Amendment liberty interest in pursuing one's chosen profession. These cherished constitutional rights require the protection of the Courts.

Yvonne Cryns was a traditional midwife who was not engaged in the practice of nursing, or advanced practice nursing, nevertheless, the Illinois Supreme Court interpreted the statute to apply to Cryns. The court was able to apply the statute to Cryns because the NAPNA is unconstitutionally overbroad and vague. Vague laws offend due process. At oral argument before the Illinois Supreme Court, when counsel for the State was asked how citizens were to know whether their conduct violated the NAPNA, counsel for the State replied that the Department of Professional Regulation would know what conduct violated NAPNA, and that the Department would use its discretion in leveling charges against individuals. Yvonne Cryns respectfully submits that such a standard violates due process.

Accordingly, Yvonne Cryns respectfully requests that her petition for writ of certiorari be granted.

Respectfully submitted,

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## APPENDIX A — OPINION OF THE SUPREME COURT OF ILLINOIS DATED AND FILED FEBRUARY 21, 2003

SUPREME COURT OF ILLINOIS

Docket No. 93412

February 21, 2003

THE PEOPLE OF THE STATE OF ILLINOIS *ex rel.* LEONARD A. SHERMAN, Director of Professional regulation,

Appellee,

v.

YVONNE CRYNS,

Appellant.

Chief Justice McMORROW delivered the opinion of the court:

At issue in this case is the narrow question of whether plaintiff, the People of the State of Illinois *ex rel.* Leonard Sherman, Director of the Illinois Department of Professional Regulation (Department), established a *prima facie* case that defendant, Yvonne Cryns, a lay midwife, violated provisions of the Nursing and Advanced Practice Nursing Act (Act) (225 ILCS 65/20-75(a) (West 2000)) when she participated in the August 19, 2000, birth of Spencer Verzi. Plaintiff filed a petition for a preliminary injunction against defendant,

pursuant to section 20-75(a) of the Act (225 ILCS 65/20-75(a) (West 2000)), arguing that injunctive relief was warranted because defendant's actions during the Verzi birth constituted the practice of professional nursing and advanced practice nursing without a license. During a hearing on plaintiff's petition, the circuit court of McHenry County granted defendant's motion for directed finding at the close of plaintiff's case in chief. The circuit court found that plaintiff had presented no evidence showing that any acts engaged in by defendant at the Verzi home constituted acts of nursing or advanced practice nursing. The appellate court reversed, holding that plaintiff had presented *prima facie* evidence that during the birth of Spencer Verzi, defendant had practiced professional nursing and advanced practice nursing without a license in violation of the Act. The appellate court accordingly remanded this cause to the circuit court for further proceedings. 327 Ill.App.3d 753. For the reasons that follow, we affirm the judgment of the appellate court.

## BACKGROUND

On January 18, 2000, Leonard Sherman, the Director of Professional Regulation (Director), issued a rule to show cause against defendant, who is a lay midwife. The rule to show cause alleged that, in practicing midwifery, defendant engaged in conduct that constituted the practice of professional nursing and advanced practice nursing, as defined within sections 5-10(l) and 15-5 of the Act (225 ILCS 65/5-10(l), 15-5 (West 2000)). The rule to show cause provided defendant with seven days in which to show why an order to cease and desist the unlicensed practice of nursing and midwifery should not be entered against her.

Defendant responded by filing a special and limited appearance objecting to the Department's jurisdiction over her as a nonnurse midwife. Defendant also filed an affidavit in which she averred that she was not licensed as a nurse or engaged in a licensed profession.

On April 7, 2000, the Director issued a cease and desist order against defendant, commanding her to immediately cease and desist from engaging in conduct constituting the practice of nursing and midwifery, until she complied with the licensing requirements for a professional nurse and an advanced practice nurse contained within the Act. Specifically, the cease and desist order stated that defendant was not registered as a professional nurse pursuant to section 10-5 of the Act (225 ILCS 65/10-5(a), (b), (c) (West 2000)); that defendant did not hold a current, national certificate as a nurse midwife from the appropriate national certifying body (225 ILCS 65/15-10(a)(3) (West 2000)); that defendant had not complied with a post-basic advanced formal education program in the area of midwifery (225 ILCS 65/15-10(a)(5) (West 2000)); that defendant does not have a collaborative agreement with a physician as required of a certified nurse midwife under the Act (225 ILCS 65/15-15 (West 2000)); and that defendant has been practicing midwifery without the appropriate license and certificate.[1]

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1. On May 12, 2000, defendant filed a two-count complaint for administrative review and declaratory judgment against the Department and the Director seeking review of the April 7, 2000, cease and desist order. On May 11, 2001, the circuit court vacated the April 7, 2001, cease and desist order. The Department did not appeal from this ruling. The propriety of the issuance of the cease and desist order is not before this court, and we express no opinion on this matter.

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On October 3, 2000, plaintiff filed a verified complaint for injunctive relief against defendant. Pursuant to section 20-75(a) of the Act (225 ILCS 65/20-75(a) (West 2000)), the Director may, in the name of the People of the State of Illinois and through the Attorney General of Illinois, petition the circuit court for an order enjoining any violation of the Act or for an order enforcing compliance with the Act. The verified complaint alleged that the Department is statutorily authorized to enforce minimum standards of professional education and licensure for the practice of nursing and advanced practice nursing. According to the complaint, defendant, as a midwife, is improperly engaged in rendering prenatal, childbirth and postpartum care without a nursing license. The complaint further alleged that defendant violated provisions of the Act when she assisted with the birth of Spencer Verzi, at the Verzi home on August 19, 2000. According to the complaint, "[w]hile defendant was physically assisting with the delivery, the Verzi baby was born in a breech position. Defendant waited approximately more than 15 minutes before calling paramedics. Defendant made efforts to resuscitate the Verzi baby which were unsuccessful." The complaint further alleged that "[v]ideotape shot at the scene shows the entire incident and shows defendant physically assisting in the birth of baby Verzi, which amounted to the continued practice of nursing or Midwifery" without the requisite license. The complaint concluded by asserting that "[d]efendant's actions of continuing to practice nursing and Midwifery without the proper qualifications, licensing and supervision is creating an imminent danger of harm to the public."

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On October 5, 2000, the circuit court entered a temporary restraining order against defendant's practice of nursing and midwifery, pending a hearing on plaintiff's complaint for preliminary injunction. The circuit court conducted a hearing on the preliminary injunction complaint on October 13, 2000. Plaintiff called Louis Verzi, the father of Spencer Verzi, to testify with respect to Spencer's birth. Verzi stated that he and his wife, Heather, hold "alternative ideas on health that are not shared with most doctors in hospitals." Accordingly, the Verzis decided that it was best that they have their child at home without the presence of a doctor or nurse. The Verzis desired to take a natural approach to childbirth and decided on a "water birth," wherein the mother gives birth while being partially submerged in a birthing pool. Verzi stated that the water-birth option was not available at any nearby hospitals, and that he and his wife hired defendant to work with them to accomplish a home water birth. According to Verzi, defendant never claimed to be a nurse, and he and his wife did not view defendant as a nurse. Rather, Verzi testified, the purpose of defendant being in their home during Spencer's birth was "to give us advice and to help us through the birth of our child, to help us in things that we didn't know." According to Verzi, defendant discussed with him and his wife the fact that if complications were to arise during the birth, medical assistance would not be immediately available.

According to Verzi, defendant had Heather fill out a "client form," in which Heather indicated that the Verzis believed in "natural health" and did not believe in prescriptions or over-the-counter medications. The responses on this form also indicated that the Verzis viewed Heather's

mother as their "doctor," meaning that they relied on her for advice with respect to their health. According to Verzi, Heather had several prenatal visits with defendant, during which defendant monitored the baby's heartbeat using both a specially designed stethoscope known as a "fetoscope," and also a device known as a "Doppler," in which reflected sound waves are used to estimate the speed and direction of blood flow. Verzi stated that a few months before Spencer's birth, defendant had disclosed that a cease and desist order was issued against her by the Department. This information, however, did not deter the Verzis from continuing their relationship with defendant, as defendant was someone that they "had come to trust" and they "felt strongly" that defendant was the person to deliver their child.

Verzi testified that at mid-morning on August 19, 2000, his wife's water broke, and that defendant arrived at their home between 1 and 1:30 p.m. Several family members and friends had gathered at the Verzi house to witness the birth. At approximately 3:45 p.m., Heather began to deliver the baby when his left foot emerged from the birth canal. According to Verzi, during the delivery defendant used the fetoscope "four or five times" to listen to the baby's heartbeat, and also used the Doppler device. Verzi recalled that at one point during the birthing process, Heather asked defendant to physically pull the baby out, and that defendant refused Heather's request. Verzi stated that defendant instead told Heather to push the baby out, and that Heather's body would know the right thing to do. However, Verzi testified that Heather continued to have difficulty in delivering the baby and that "when matters became urgent" defendant did attempt to physically extract the baby. By 4:30 p.m., the baby was

born. However, upon his birth Spencer was not breathing. Verzi stated that although defendant administered CPR to Spencer for approximately 10 minutes using an "Ambu bag," which is a device used to push air into a baby's lungs after birth, the baby was not responsive. Verzi testified that at that point defendant requested that 911 be called. According to Verzi, defendant was still at their home, attempting to resuscitate Spencer, when the ambulance and paramedics arrived.

Verzi further testified that the delivery of Spencer was videotaped by two cameras which were present in the room: one video camera was mounted on a tripod and was stationary, while the other video camera was hand-held and operated by a friend of the family. Verzi stated that, during the evening prior to his testimony, a police officer delivered a videotape to his home. Upon viewing the videotape, Verzi realized that the one tape contained the video recordings from both cameras present during the birth. He also testified that the tape ran for approximately 1 hour, 20 minutes. Verzi testified that although he did not know who combined the two videotapes together, the videotape he viewed on the evening prior to his testimony truly and accurately reflected the events which transpired at his home on August 19, 2000. The videotape was not played in court.

Plaintiff thereafter moved to enter the videotape into evidence. Defendant objected to the admission of the videotape on the ground that plaintiff had failed to lay a proper foundation for the tape recording. Defendant argued that plaintiff was required to call the individuals who made the video recordings to testify. The circuit court, over

defendant's objection, held that Verzi's testimony that the videotape truly and accurately reflected the events of Spencer's birth provided a sufficient foundation for the admission of the videotape. The court then admitted the tape into evidence. However, the circuit court judge did not view the videotape at any time during the proceedings.

Plaintiff next called defendant to testify. Defendant invoked her fifth amendment (U.S. Const., amend. V) privilege against self-incrimination because of criminal charges pending against her as a result of Spencer Verzi's death, and refused to answer any questions.

At this juncture, plaintiff rested its case.

After plaintiff rested its case, defendant moved for a directed finding, arguing that plaintiff had presented no evidence showing that any acts performed by defendant during the birth of Spencer Verzi constituted acts of nursing or of advanced practice nursing. The circuit court agreed, and granted defendant's motion. The circuit court stated that plaintiff produced no evidence that what occurred during the Verzi birth violated any provisions of the Act. The circuit court also dissolved the temporary restraining order previously entered against defendant. However, the circuit court stayed its order subject to an interlocutory appeal of its ruling.

The appellate court vacated the circuit court's order denying plaintiff's motion for preliminary injunction and remanded the cause to the circuit court. *People ex rel. Sherman v. Cryns,* 321 Ill.App.3d 990 (2001) (*Cryns I*).

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The appellate court determined that the circuit court abused its discretion in ruling on plaintiff's request for a preliminary injunction without viewing the videotape that it had admitted into evidence.

On August 7, 2001, the circuit court entered an order reaffirming its decision to grant a directed finding in favor of defendant. The circuit court held that after viewing the videotape and reviewing the transcript of the hearing, it remained convinced that "there is no evidence in the record * * * from which this court could conclude that the activities of [defendant] constituted the practice of nursing or Midwifery."

The appellate court reversed. 327 Ill.App.3d 753 (*Cryns II* ). The appellate court first rejected defendant's contention that the circuit court abused its discretion by admitting into evidence the videotape recording of the events that transpired at the Verzi home on August 19, 2000. The appellate court held that a videotape is properly admitted if it is identified as an accurate and complete portrayal of certain facts relevant to a particular issue and is verified by a witness with personal knowledge who attests that it is a correct representation of these facts. In the matter at bar, the appellate court determined that Verzi was a competent witness who had personal knowledge to identify the videotape as being a correct representation of the birth of his child. The appellate court also rejected defendant's contention that although Verzi testified that the videotape he viewed the night before the hearing accurately depicted the events portrayed in the tape, there was no verification at the hearing that the videotape admitted into evidence was the same one that Verzi

had viewed. The appellate court observed that defendant failed to cite to any authority that a videotape must be viewed at trial in order to establish a foundation for its admission into evidence. In addition, the appellate court held that defendant's suggestion that the videotape entered into evidence might not have been the same as that viewed by Verzi the night before was completely unsubstantiated.

The appellate court then turned to the question of whether the circuit court erred in granting defendant's motion for a directed finding at the conclusion of plaintiff's case in chief. The appellate court determined that in the matter at bar plaintiff, through the testimony of Louis Verzi and the events depicted in the videotape, established a *prima facie* case that during Spencer's birth defendant was practicing nursing or midwifery without a license.

The appellate court observed that under section 5-10(l) of the Act, "[r]egistered professional nursing practice" includes "the assessment of healthcare needs, nursing diagnosis, planning, implementation, and nursing evaluation," the "promotion, maintenance, and restoration of health," and "counseling, patient education, health education, and patient advocacy." 225 ILCS 65/5-10(l) (West 2000). The appellate court noted that Verzi had testified that he and his wife, Heather, had hired and paid defendant to advise and assist them in the delivery of their baby. In addition, the court observed that prior to Spencer's birth, defendant used various medical instruments to listen to his heartbeat and ascertain his health status. Further, defendant actively assisted in delivering the baby and in resuscitation efforts. In light of these facts, the appellate court concluded that defendant was

practicing nursing or midwifery, as she was assessing the healthcare needs of the mother and baby, making nursing evaluations, attempting to promote, maintain and restore the baby's health, and attempting corrective measures to improve the baby's health status. The appellate court also concluded that the Act provides adequate notice of what duties a person without a nursing license is unable to perform. Accordingly, the appellate court held that the trial court erred in finding that plaintiff presented no evidence from which the court could conclude that defendant's activities constituted the practice of nursing or midwifery in violation of the Act.

Defendant petitioned this court for leave to appeal pursuant to our Rule 315(a) (177 Ill.2d R. 315(a)). We granted defendant's petition.

## ANALYSIS

The narrow issue presented in this appeal is whether plaintiff adduced evidence during the October 13, 2000, hearing sufficient to establish a *prima facie* case that defendant's conduct on August 19, 2000, during the birth of Spencer Verzi constituted the practice of nursing and advanced practice nursing without a license in violation of the Act. For the reasons that follow, we hold that the circuit court erred in directing a finding for defendant.

At the conclusion of plaintiff's case in chief, defendant, pursuant to section 2-1110 of the Code of Civil Procedure (735 ILCS 5/2-1110 (West 2000)), moved for a finding in her favor. Section 2-1110 provides that in all cases tried without a jury, a defendant may, at the close of the plaintiff's

case, move for a finding or judgment in his or her favor. In ruling on this motion, a court must engage in a two-prong analysis. *Kokinis v. Kotrich,* 81 Ill.2d 151, 155 (1980). First, the court must determine, as a matter of law, whether the plaintiff has presented a *prima facie* case. A plaintiff establishes a *prima facie* case by proffering at least "some evidence on every element essential to [the plaintiff's underlying] cause of action." *Kokinis,* 81 Ill.2d at 154. If the plaintiff has failed to meet this burden, the court should grant the motion and enter judgment in the defendant's favor. *Kokinis,* 81 Ill.2d at 155. Because a determination that a plaintiff has failed to present a *prima facie* case is a question of law, the circuit court's ruling is reviewed *de novo* on appeal. See *Kokinis,* 81 Ill.2d at 154-55; *Evans v. Gurnee Inns, Inc.,* 268 Ill.App.3d 1098, 1102 (1994).

If, however, the circuit court determines that the plaintiff has presented a *prima facie* case, the court then moves to the second prong of the inquiry. In its role as the finder of fact, the court must consider the totality of the evidence presented, including any evidence which is favorable to the defendant. Contrary to the *Pedrick* standard, which governs a motion for directed verdict during a jury trial (*Pedrick v. Peoria & Eastern R.R. Co.,* 37 Ill.2d 494 (1967)), under section 2-1110 the court is not to view the evidence in the light most favorable to the plaintiff. *Kokinis,* 81 Ill.2d at 154. Rather, the circuit court must weigh all the evidence, determine the credibility of the witnesses, and draw reasonable inferences therefrom. 735 ILCS 5/2-1110 (West 2000); *Kokinis,* 81 Ill.2d at 154-55. This weighing process may result in the negation of some of the evidence presented by the plaintiff. After weighing the quality of all of the evidence, both that presented

by the plaintiff and that presented by the defendant, the court should determine, applying the standard of proof required for the underlying cause, whether sufficient evidence remains to establish the plaintiff's *prima facie* case. If the circuit court finds that sufficient evidence has been presented to establish the plaintiff's *prima facie* case, the court should deny the defendant's motion and proceed with the trial. *Kokinis,* 81 Ill.2d at 155. If, however, the court determines that the evidence warrants a finding in favor of the defendant, it should grant the defendant's motion and enter a judgment dismissing the action. *Kokinis,* 81 Ill.2d at 155. A reviewing court will not reverse the circuit court's ruling on appeal unless it is contrary to the manifest weight of the evidence. *Kokinis,* 81 Ill.2d at 154.

As stated, in the matter at bar, the circuit court determined that plaintiff failed to present a *prima facie* case that defendant's conduct during the Verzi birth violated provisions of the Act and, therefore, denied plaintiff's petition for a preliminary injunction by granting defendant's motion for a directed verdict. The circuit court arrived at this conclusion by finding that plaintiff failed to adduce *any* evidence that defendant was engaged in the practice of nursing without a license in violation of the Act. Because the circuit court determined that plaintiff failed to establish a *prima facie* case as a matter of law, we consider the circuit court's ruling under a *de novo* standard of review.

The purpose of a preliminary injunction is to maintain and preserve the status quo, pending a decision on the merits of a cause. *Callis, Papa, Jackstadt & Halloran, P.C. v. Norfolk & Western Ry. Co.,* 195 Ill.2d 356, 365 (2001).

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A preliminary injunction is not intended to determine controverted rights or decide the merits of a case. *People ex rel. Sklodowski v. State,* 162 Ill.2d 117, 131 (1994). Under section 20-75 of the Act (225 ILCS 65/20-75 (West 2000)), the Director is authorized to petition the circuit court for an injunction against any individual who is practicing nursing without a license. Where, as here, the State or a governmental agency is expressly authorized by statute to seek injunctive relief, the traditional equitable elements necessary to obtain an injunction need not be satisfied. *Sadat v. American Motors Corp.,* 104 Ill.2d 105, 111-13 (1984); see *People v. Van Tran Electric Corp.,* 152 Ill.App.3d 175, 184 (1987); *People ex rel. Hartigan v. Stianos,* 131 Ill.App.3d 575, 580 (1985). The State or the agency seeking the injunction need only show that the statute was violated and that the statute relied upon specifically allows injunctive relief. *Sadat,* 104 Ill.2d at 111-13; see *Midland Enterprises, Inc. v. City of Elmhurst,* 226 Ill.App.3d 494, 504 (1993). This principle of law is animated by the rationale that because statutes authorizing injunctive relief often do so on behalf of a public official in his or her capacity as the enforcer of a regulatory scheme, "the violation of such a statute implies an injury to the general public [and] [s]uch injury necessitates the statutory authorization for equitable relief and supplants the traditional equitable pleading requirements." *Sadat,* 104 Ill.2d at 113. It is presumed that public harm occurs when a statute is violated. See *Midland,* 226 Ill.App.3d at 504; *Stianos,* 131 Ill.App.3d at 580 ("The principle underlying the willingness of the courts to issue statutory injunctions to public bodies to restrain violations of a statute is that harm to the public at large can be presumed from the statutory violation alone"). Once it has been established that a statute has been violated,

no discretion is vested in the circuit court to refuse to grant the injunctive relief authorized by that statute. See *Midland*, 226 Ill.App.3d at 504.

Accordingly, in order to establish a *prima facie* case for statutory injunctive relief, and to withstand a motion for a directed finding, plaintiff at bar was required to present at least some evidence in the circuit court that defendant's conduct during the Verzi birth violated the provisions of the Act. Defendant contends that the circuit court correctly held that plaintiff failed to meet this evidentiary burden. Defendant characterizes herself as a "traditional (non-nurse) midwife" and contends that she is part of a class of individuals that is not specifically identified in the Act. Defendant argues that because there is no explicit prohibition against traditional (nonnurse) midwifery in the Act, her conduct, therefore, is not subject to regulation by the Department. Plaintiff responds that the broad language chosen by the General Assembly to describe the conduct governed by the Act, coupled with the legislature's stated purpose in passing the Act of protecting the public health, safety and welfare, as well as the legislature's explicit command that the terms of the Act be liberally construed to effectuate this stated purpose, evince that the General Assembly intended that conduct, such as that engaged in by defendant during the Verzi birth, be regulated under the Act.

The question of whether the conduct of defendant on August 19, 2000, falls within the scope of the Act requires us to interpret the provisions found within that statute. Accordingly, the issue before us is a matter of statutory

construction, and our review is *de novo. Sylvester v. Industrial Comm'n,* 197 Ill.2d 225, 232 (2001). Our inquiry is guided by well-settled principles.

In construing the meaning of a statute, the primary objective of this court is to ascertain and give effect to the intention of the legislature. *In re Detention of Lieberman,* 201 Ill.2d 300, 307 (2002); *Michigan Avenue National Bank v. County of Cook,* 191 Ill.2d 493, 503-04 (2000). All other rules of statutory construction are subordinate to this cardinal principle. *Sylvester,* 197 Ill.2d at 232; *Henrich v. Libertyville High School,* 186 Ill.2d 381, 387 (1998). We ascertain the intent of the legislature by examining the language of the statute, which is "the most reliable indicator of the legislature's objectives in enacting a particular law." *Michigan Avenue National Bank,* 191 Ill.2d at 504; see also *Yang v. City of Chicago,* 195 Ill.2d 96, 103 (2001). The language of the statute must be afforded its plain, ordinary and popularly understood meaning (*Lieberman,* 201 Ill.2d at 308; *Bubb v. Springfield School District 186,* 167 Ill.2d 372, 381 (1995)), and we are to give the statutory language the fullest, rather than the narrowest, possible meaning to which it is susceptible (*Lake County Board of Review v. Property Tax Appeal Board,* 119 Ill.2d 419, 423 (1988)). This court will not depart from the plain language of a statute by reading into it exceptions, limitations or conditions that conflict with the express legislative intent. *Petersen v. Wallach,* 198 Ill.2d 439, 446 (2002); *Yang,* 195 Ill.2d at 103.

All provisions of a statutory enactment are viewed as a whole. *Michigan Avenue National Bank,* 191 Ill.2d at 504; *Bubb,* 167 Ill.2d at 382. Therefore, words and phrases must

be interpreted in light of other relevant provisions of the statute and must not be construed in isolation. *Sylvester,* 197 Ill.2d at 232; *Michigan Avenue National Bank,* 191 Ill.2d at 504. Each word, clause and sentence of the statute, if possible, must be given reasonable meaning and not rendered superfluous. *Sylvester,* 197 Ill.2d at 232. Accordingly, in determining the intent of the General Assembly, we may properly consider not only the language of the statute, but also the purpose and necessity for the law, the evils sought to be remedied, and goals to be achieved. *In re Detention of Lieberman,* 201 Ill.2d at 308; *People v. Pullen,* 192 Ill.2d 36, 42 (2000). "Legislative intent can be ascertained from a consideration of the entire Act, its nature, its object and the consequences that would result from construing it one way or the other." *Fumarolo v. Chicago Board of Education,* 142 Ill.2d 54, 96 (1990). In construing a statute, we presume that the General Assembly, in its enactment of legislation, did not intend absurdity, inconvenience or injustice. *In re Lieberman,* 201 Ill.2d at 309; *Burger v. Lutheran General Hospital,* 198 Ill.2d 21, 40 (2001).

It is well settled that the General Assembly has wide regulatory power with respect to the health-care professions, and it is within the broad discretion of the legislature " 'to determine not only what the public interest and welfare require, but to determine the measures needed to secure such interest.'" *Burger,* 198 Ill.2d at 41, quoting *Chicago National League Ball Club, Inc. v. Thompson,* 108 Ill.2d 357, 364 (1985). An example of the legislature's exercise of these broad regulatory powers is its enactment of the Nursing and Advanced Practice Nursing Act (225 ILCS 65/5-1 *et seq.*

(West 2000)). In passing this Act, the General Assembly explicitly stated that because "[t]he practice of professional and practical nursing in the State of Illinois is hereby declared to affect the public health, safety, and welfare," it is "subject to regulation and control in the public interest." 225 ILCS 65/5-5 (West 2000). In this Act, the legislature clearly expressed its intent that it is "a matter of public interest and concern that the practice of nursing, as defined in this Act, merit and receive the confidence of the public and that only qualified persons be authorized to so practice in the State of Illinois." 225 ILCS 65/5-5 (West 2000). Therefore, the legislature mandated that "[f]or the protection of life and the promotion of health * * * any person practicing or offering to practice professional * * * nursing in Illinois shall submit evidence that he or she is qualified to practice, and shall be licensed as provided under this Act." 225 ILCS 65/5-15 (West 2000). In order to effectuate the important regulatory and remedial purposes of the Act, the legislature explicitly instructed that the Act is to be "liberally construed to best carry out these subjects and purposes." 225 ILCS 65/5-5 (West 2000).

The Act authorizes the licensure of nurses in three categories: licensed practical nurses, registered professional nurses, and advanced practice nurses. Only the latter two categories are at issue in this appeal. A "registered professional nurse" is defined in section 5-10(k) of the Act as "a person who is licensed as a professional nurse under this Act and practices nursing as defined in paragraph (l) of this Section." 225 ILCS 65/5-10(k) (West 2000). Paragraph (l) of section 5-10 of the Act (225 ILCS 65/5-

10(l) (West 2000)) sets forth the conduct that constitutes a "[r]egistered professional nursing practice" for purposes of the Act:

> " 'Registered professional nursing practice' includes all nursing specialties and means the performance of any nursing act based upon professional knowledge, judgment, and skills acquired by means of completion of an approved registered professional nursing education program. A registered professional nurse provides nursing care emphasizing the importance of the whole and the interdependence of its parts through the nursing process to individuals, groups, families, or communities, that includes but is not limited to: (1) the assessment of healthcare needs, nursing diagnosis, planning, implementation, and nursing evaluation; (2) the promotion, maintenance, and restoration of health; (3) counseling, patient education, health education, and patient advocacy; (4) the administration of medications and treatments as prescribed by a physician licensed to practice medicine in all of its branches, a licensed dentist, a licensed podiatrist, or a licensed optometrist or as prescribed by a physician assistant in accordance with written guidelines required under the Physician Assistant Practice Act of 1987 or by an advanced practice nurse in accordance with a written collaborative agreement required under the Nursing and Advanced Practice Nursing Act; (5) the coordination and management of the

> nursing plan of care; (6) the delegation to and supervision of individuals who assist the registered professional nurse implementing the plan of care; and (7) teaching and supervision of nursing students."

A nurse who specializes in the delivery of babies is referred to as a "certified nurse midwife" in the Act and is characterized as an "[a]dvanced practice nurse." 225 ILCS 65/15-5 (West 2000). An advanced practice nurse (APN) is a registered professional nurse, as defined in section 5-10(k) of the Act (225 ILCS 65/5-10(k) (West 2000)), who meets the additional licensing requirements set forth in section 15-10 of the Act (225 ILCS 65/15-10 (West 2000)). Advanced practice nursing licenses are granted for four categories of APNs, only one of which is relevant here: certified nurse midwife. Pursuant to section 15-10 of the Act, a registered nurse shall be qualified for licensure as a certified nurse midwife if that person has applied in writing to the Department; holds a current license to practice as a registered nurse in this state; has successfully completed requirements to practice as, and holds a current, national certification as, a nurse midwife; has paid the required fees; and has successfully completed a post-basic advanced practice formal education program in nurse midwifery. 225 ILCS 65/15-10 (West 2000). In addition, pursuant to section 15-15 of the Act (225 ILCS 65/15-15 (West 2000)), a certified nurse midwife must enter into a written collaborative agreement with a physician who provides medical direction as authorized in the collaborative agreement. A certified nurse midwife must meet all of the above requirements in order to

be qualified to treat patients "by using medical, therapeutic, and corrective measures to treat illness and improve health status." 225 ILCS 65/15-5 (West 2000).

As an initial matter, we address an evidentiary argument raised by defendant with respect to the videotape of Spencer's birth admitted into evidence by the circuit court. In her brief to this court, defendant reiterates her position that the circuit court erred in allowing the videotape into evidence. Plaintiff is correct, and defendant acknowledges, that defendant failed to raise this argument in her petition for leave to appeal to this court (see 177 Ill.2d R. 315(b)(3) (the petition shall state "the points relied upon for reversal of the judgment of the Appellate Court")), and that a party's failure to raise an argument in the petition for leave to appeal may be deemed a waiver of that argument. *Federal Deposit Insurance Corp. v. O'Malley,* 163 Ill.2d 130, 154 (1994). However, the rule of waiver is a limitation on the parties and not on the court. *Michigan Avenue National Bank,* 191 Ill.2d at 518. We choose to address defendant's contention.

A videotape may be admitted as demonstrative evidence when it is properly authenticated and is relevant to a particular issue in the case. *Cisarik v. Palos Community Hospital,* 144 Ill.2d 339, 341-42 (1991). First, a foundation must be laid, by someone having personal knowledge of the filmed object, that the film is an accurate portrayal of what it purports to show. *Cisarik,* 144 Ill.2d at 342. "Verification may be furnished by the testimony of any competent witness who has sufficient knowledge to testify that the videotape fully represents what it purports to portray." *Missouri Portland Cement Co. v. United Cement, Lime, Gypsum & Allied*

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*Workers International Union, Division of Boilermakers, AFL-CIO, Local No. 438,* 145 Ill.App.3d 1023, 1027 (1986). Second, a videotape will be considered relevant only as long as its probative value is not substantially outweighed by the danger of unfair prejudice. *Cisarik,* 144 Ill.2d at 342. The admission of a videotape into evidence is within the sound discretion of the circuit court and will not be disturbed absent an abuse of discretion. *Missouri Portland Cement Co.,* 145 Ill.App.3d at 1027.

In her submission to this court, defendant does not quarrel with the above-discussed principles of law. She does assert, however, that the circuit court erred in admitting the videotape into evidence because although Louis Verzi stated that the videotape he viewed in his home the evening before his court testimony was an accurate portrayal of the events that occurred during his son's birth, this testimony was inadequate support for the admission of the videotape that was actually admitted into evidence. We agree. Whether the videotape viewed by Verzi at his home on the evening prior to the October 13, 2000, hearing was the same tape produced by plaintiff in court and admitted into evidence is unknown. During the hearing, the videotape that was admitted into evidence was not played for the parties, the witnesses or the court. Plaintiff proffered no testimony during the hearing that, based upon Verzi's personal knowledge, the videotape that was *actually admitted into evidence* was a true and accurate depiction of what it purported to show. The testimony proffered by Verzi with respect to the videotape he viewed at his home during the previous evening was insufficient to establish a proper evidentiary foundation for the videotape that was actually admitted. Accordingly, we hold that because

the foundation for admission of the videotape was insufficient, the circuit court abused its discretion in admitting the videotape into evidence.

Upon reviewing the record in this matter, absent the videotape, we conclude that the conduct of defendant on August 19, 2000, during the birth of Spencer Verzi constituted *prima facie* evidence of "professional nursing" within the meaning of the Act. Therefore, we hold that the circuit court erred in finding that plaintiff failed to present any evidence to establish a *prima facie* case that during the Verzi birth defendant engaged in conduct which violated the Act. It is clear that the General Assembly passed the Act as a comprehensive regulation of the practice of nursing, and that the Act reflects serious policy concerns about the detrimental effect to the public health and safety when unlicensed individuals engage in the conduct described in, and regulated by, the Act. To this end, the legislature explicitly provided in section 5-15 (225 ILCS 65/5-15 (West 2000)) that only those persons qualified and licensed under the Act are authorized to engage in the conduct defined as "professional nursing" in section 5-10(l) of the Act. 225 ILCS 65/5-10(l) (West 2000). The legislature chose broad language to define those individuals covered by the Act, stating that "any person" who practices or offers to practice professional nursing in this state must abide by the rules and regulations set forth in this statute. 225 ILCS 65/5-15 (West 2000).

The General Assembly, however, also deemed it appropriate to enumerate certain limited and explicit exceptions to the coverage of the Act. For example, the Act does not apply to individuals who "furnish[ ] * * * nursing

assistance in an emergency" (225 ILCS 65/5-15(c) (West 2000)) or to instances where "[t]he incidental care of the sick [is performed] by members of the family, domestic servants or housekeepers" (225 ILCS 65/5-15(e) (West 2000)). The Act also excludes from coverage those individuals who care for the sick "where treatment is by prayer or spiritual means" (225 ILCS 65/5-15(e) (West 2000)) and exempts from its coverage persons "employed as nursing aides, attendants, orderlies, and other auxiliary workers in private homes, long term care facilities, nurseries, hospitals or other institutions" (225 ILCS 65/5- 15(f) (West 2000)). Under the principle of *expressio unius est exclusio alterius,* the enumeration of exceptions in a statute is construed as an exclusion of all other exceptions. See 2A N. Singer, Sutherland on Statutory Construction § 47.23 (6th ed. 2000). We have previously observed that this rule of statutory construction "is based on logic and common sense," as "[i]t expresses the learning of common experience that when people say one thing they do not mean something else." *Bridgestone/Firestone, Inc. v. Aldridge,* 179 Ill.2d 141, 152 (1997). Applying this rule of construction to the matter before us, we conclude that the General Assembly intended to exempt from the coverage of the Act only those instances specifically enumerated. We discern no contrary legislative intent which would overcome this rule of construction and support defendant's contention that traditional midwives, as a class, were intended by the General Assembly to be excluded from coverage under the Act. See *Bridgestone/ Firestone, Inc.,* 179 Ill.2d at 153-54 ("the principle that the expression of one thing in a statute excludes any other thing is only a rule of statutory construction, not a rule of law * * * [and] may be overcome by a strong indication of legislative

intent"). Indeed, the strong public policy considerations of protecting the public health and safety which underpin the Act lend additional support for our conclusion.

In addition to broadly defining the class of individuals subject to regulation under the Act, the General Assembly also employed broad language to define the conduct to which the Act applies. Section 5-10(l) of the Act defines "professional nursing practice" to include "the assessment of healthcare needs, nursing diagnosis, planning, implementation, and nursing evaluation," the "promotion, maintenance, and restoration of health," and "counseling, patient education, health education, and patient advocacy." 225 ILCS 65/5-10(l) (West 2000). The record establishes that plaintiff proffered sufficient evidence to establish a *prima facie* case that defendant's conduct with respect to the Verzi birth constituted the practice of "professional nursing" and was therefore prohibited for an individual without a nursing license.

Louis Verzi testified that he and his wife hired defendant "to give us advice and to help us through the birth of our child, to help us in things that we didn't know." Verzi stated that Heather had several prenatal visits with defendant, during which defendant monitored the status of the baby's health by using a fetoscope and Doppler to listen for the baby's heartbeat. On the date of Spencer's birth, August 19, 2000, defendant arrived at the Verzi home shortly after Heather began her labor. After Heather delivered the baby's left foot, she experienced difficulty in delivering any more of the baby. Verzi testified that during the labor process, defendant, on several occasions, used the fetoscope and Doppler to check

the baby's heartbeat while the baby was still in Heather's uterus. Once Spencer was born, defendant attempted to resuscitate him with the aid of an Ambu bag to push air into his lungs. Defendant attempted resuscitation in this manner for approximately 10 minutes, stopping every minute or so to listen to Spencer's heartbeat with the fetoscope. We conclude that the above described evidence is sufficient to establish a prima facie case that defendant engaged in the practice of nursing without a license. We agree with the appellate court below that throughout her interaction with the Verzis, defendant was assessing the "healthcare needs" of both Heather and the baby, and making "nursing evaluation[s]" in violation of section 5-10(l) of the Act (225 ILCS 65/5-10(l ) (West 2000)). We also agree with the appellate court that defendant's conduct was aimed at "promot[ing], maint[aining], and restor[ing]" the health of the mother and child, also in violation of section 5-10(l) of the Act (225 ILCS 65/5-10(l) (West 2000)). Further, defendant provided "counseling, patient education, [and] health education," also in violation of the Act. 225 ILCS 65/ 5-10(l) (West 2000). Finally, we agree with the appellate court that defendant's actions in attempting to resuscitate the baby constituted "corrective measures" to improve his health status and constituted additional violations of the Act (225 ILCS 65/15-5 (West 2000)).

Defendant further contends that, if we determine that her conduct during the Verzi birth constituted "nursing practice" within the meaning of the Act, she is nevertheless exempted from the Act's coverage because she engaged in the practice of nursing only because she was faced with an emergency situation when she could not hear the baby's

heartbeat. We disagree. Louis Verzi testified that prior to Spencer's birth, defendant provided the Verzis with "advice" and "help" with respect to the birthing process, and that during prenatal visits with Heather, defendant checked the baby's heartbeat with the aid of the fetoscope and Doppler. Further, on the day Spencer was born, defendant used both the fetoscope and Doppler on several occasions to listen to Spencer's heartbeat *in utero.* Thus, the record reveals that defendant performed several acts which constituted the practice of nursing, within the meaning of the Act, prior to any indication that the baby was in distress. Accordingly, we reject defendant's contention that she is not subject to the provisions of the Act.

In sum, we conclude that the circuit court erred in holding that plaintiff failed to present a *prima facie* case that defendant engaged in conduct violative of the Act. As stated, in construing the meaning of statutes, the primary objective of this court is to ascertain and give effect to the legislature's intent. *Michigan Avenue National Bank,* 191 Ill.2d at 503-04. In exercising its broad powers in regulating matters of public health and safety, the General Assembly employed broad language in the provisions of the Act to effectuate the Act's stated purpose of protecting life and promoting health. See 225 ILCS 65/5-15 (West 2000). In addition, the legislature explicitly instructed that the provisions of the Act are to be liberally construed to effectuate these public policy goals. 225 ILCS 65/5-5 (West 2000). In interpreting statutory provisions, we are to afford the statute's plain language its fullest meaning to effectuate the legislative intent (*Lake County Board of Review,* 119 Ill.2d at 423), and we may not

read into a statute exceptions, limitations or conditions that conflict with the intent of the legislature (*Petersen,* 198 Ill.2d at 446).

Our holding today effectuates the intent of the General Assembly, as evinced in the Act, to promote the public health, safety and welfare by ensuring that those individuals who engage in the conduct described in the Act are properly trained and licensed. Indeed, a contrary result would thwart the intent of the legislature in regulating conduct it has defined as the practice of nursing. Were we to accept defendant's argument that those persons who label themselves as traditional nonnurse midwives are not regulated by the Act, an absurd result would occur. An individual would be able to bypass the licensing and training requirements of the Act simply by referring to herself as a "traditional nonnurse midwife," even if that person provided exactly the same type of nursing care as a certified nurse midwife. This would mean that a person's status under the Act would depend merely upon how she labeled herself, and the conduct in which that person engaged would become irrelevant. In construing statutes, we presume that the General Assembly, in enacting the legislation, did not intend absurdity or injustice. *Burger,* 198 Ill.2d at 40. The stringent training and licensing requirements for a certified nurse midwife demonstrate the legislature's intent to regulate this specific area of nursing practice. Defendant's interpretation of the Act would render a certified nurse midwife's license meaningless. Certainly, the General Assembly could not have intended such an absurd result.

*Appendix A*

Defendant also raises the contention on appeal that the provisions of Act that prohibit the practice of nursing without a license are unconstitutionally vague as applied to her, thereby violating her right to due process. According to defendant, the Act contains no language to indicate that it is intended to govern the practice of traditional midwifery, as the Act fails to include a definition of midwifery and does not expressly prohibit the practice of midwifery by persons other than nurses. Thus, defendant concludes, the Act does not provide adequate notice of the conduct prohibited.

The constitutionality of a statute is a question of law subject to *de novo* review. *Burger,* 198 Ill.2d at 31; *Miller v. Rosenberg,* 196 Ill.2d 50, 57 (2001). Statutes are presumed to be constitutional, and the party challenging the validity of the statute has the burden to clearly establish the constitutional invalidity. *Arangold Corp. v. Zehnder,* 187 Ill.2d 341, 351 (1999); *Russell v. Department of Natural Resources,* 183 Ill.2d 434, 441 (1998). A court must construe a statute so as to affirm its constitutionality, if the statute is reasonably capable of such a construction. *Burger,* 198 Ill.2d at 32. Accordingly, " 'if [a] statute's construction is doubtful, a court will resolve the doubt in favor of the statute's validity.'" *Miller,* 196 Ill.2d at 58, quoting *People v. Shephard,* 152 Ill.2d 489, 499 (1992). We conclude that defendant has failed to satisfy her burden of clearly establishing that the provisions of the Act are unconstitutionally vague as applied to her.

A statute violates the due process clauses of the United States Constitution or the Illinois Constitution on the basis of vagueness " 'only if its terms are so ill-defined that the ultimate decision as to its meaning rests on the opinions and

whims of the trier of fact rather than any objective criteria or facts.' " *Stern v. Norwest Mortgage, Inc.*, 179 Ill.2d 160, 168 (1997), quoting *People v. Burpo*, 164 Ill.2d 261, 265-66 (1995). In order to succeed on a vagueness challenge to a statute that does not involve a first amendment right, a party must establish that the statute is vague as applied to the conduct for which the party is being prosecuted. *People v. Jihan*, 127 Ill.2d 379, 385 (1989); see *People v. Stults*, 291 Ill.App.3d 71, 83 (1997). A statute is not vague, and therefore does not violate due process, if the duty imposed by the statute is set forth in terms definite enough to serve as a guide to those who must comply with it. *Chastek v. Anderson*, 83 Ill.2d 502, 507 (1981). "[T]he party must show that the statute did not provide clear notice that the party's conduct was prohibited." *Jihan*, 127 Ill.2d at 385; see also *Stults*, 291 Ill.App.3d at 83. In other words, the provisions of a statute must be definite so that a " 'person of ordinary intelligence [has] a reasonable opportunity to know what is prohibited, so that he may act accordingly.' " *Jihan*, 127 Ill.2d at 385, quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108, 33 L. Ed. 2d 222, 227, 92 S. Ct. 2294, 2298-99 (1972). When the statute is examined in the light of the facts of the case and the statute clearly applies to the party's conduct, then a challenge to the statute's constitutionality based upon vagueness will be unsuccessful. *People v. Ryan*, 117 Ill.2d 28, 33-34 (1987).

In the matter at bar, defendant asserts that the Act is unconstitutionally vague, as it affords her no advance notice of the type of acts which constitute "professional nursing." We disagree. The provisions of the Act that describe the practice of professional nursing and advanced practice

nursing are sufficiently explicit to inform those subject to the Act of the conduct to which it applies. The legislature has provided clear definitions of the conduct it considers to be the practice of nursing, which includes: assessing a health-care need and making a nursing evaluation; promoting, maintaining and restoring health; counseling, patient education and health education; and using medical, therapeutic and corrective measures to treat illness and improve health status. 225 ILCS 65/5-10(l), 15-5 (West 2000). We hold that the provisions of the statute are set forth in terms definite enough to afford an individual of ordinary intelligence with clear notice as to what conduct is prohibited absent a nursing license. We conclude that defendant has not met her burden of rebutting the presumption of constitutionality and establishing that the provisions of the Act are vague as applied to her. As stated, this court will construe a statute as constitutional where it can do so reasonably. *Bonaguro v. County Officers Electoral Board,* 158 Ill.2d 391, 397 (1994).

Defendant also asserts that our decision in *People v. Jihan,* 127 Ill.2d 379 (1989), is controlling in this case. We disagree. Our decision in *Jihan* is factually distinguishable from the matter at bar. At issue in *Jihan* was a provision of the now-repealed Medical Practice Act (Ill. Rev. Stat. 1985, ch. 111, par. 4401 *et seq.*), which prohibited any person from the "practice * * * [of] midwifery" without a state license to do so (Ill. Rev. Stat. 1985, ch. 111, par. 4403). The defendant in *Jihan* was convicted of practicing midwifery without a license and sentenced to one year of probation. The defendant appealed her conviction, asserting that the statute under which she was convicted was unconstitutionally vague as applied

to her because the term "midwifery" was not defined. We held that the term "midwifery," as applied to the defendant, was ambiguous because it was not clear whether the term had "the broad meaning of *assisting* at childbirth" or "the more narrow meaning of actually *delivering* the child at birth." (Emphases in original.) *Jihan,* 127 Ill.2d at 388. This court held that evidence had been presented that the defendant assisted at the birth, but that there was no showing that the defendant delivered the child. Accordingly, this court concluded that the Act was unconstitutionally vague as it applied to the defendant in that it did not provide sufficient notice that her conduct in that case was prohibited. *Jihan,* 127 Ill.2d at 389.

Unlike in *Jihan,* where the term "midwifery" was not defined in the statute, the Nursing and Advanced Practice Nursing Act clearly and extensively defines "professional nursing" and "advanced practice nursing." The constitutional infirmity in *Jihan* stemmed from the fact that there was a broad range of activity that could be encompassed by the term "midwifery," and it was unclear whether the legislature intended to proscribe the assistance at a delivery or whether the proscription was limited to the actual performance of the delivery. In contrast, viewing the terms "professional nursing" and "advanced practice nursing" in the context of the instant case, there are no ambiguities in those terms as they are defined by the Act, and as was found by the *Jihan* court in the term "midwifery." In addition, we observe that the defendant in *Jihan* was the subject of criminal proceedings, whereas in the matter at bar civil proceedings are at issue. As we stated in *Jihan,* "there is a greater tolerance for statutory ambiguity in civil proceedings than in criminal

proceedings 'because the consequences of imprecision are qualitatively less severe.'" *Jihan,* 127 Ill.2d at 387, quoting *Village of Hoffman Estates v. The Flipside, Hoffman Estates, Inc.,* 455 U.S. 489, 498-99, 102 S. Ct. 1186, 1193, 71 L. Ed. 2d 362, 371-72 (1982).

We also reject defendant's contention that the appellate court violated the doctrine of the separation of powers (Ill. Const. 1970, art. II, § 1) when, in defendant's words, the court "extended [the Act's] jurisdiction to include traditional (non-nurse) midwives." The Illinois Constitution provides that the legislative, executive and judicial branches are separate, and that "[n]o branch shall exercise powers properly belonging to another." Ill. Const. 1970, art. II, § 1. In " 'both theory and practice, the purpose of the [separation of powers] provision is to ensure that the whole power of two or more branches of government shall not reside in the same hands.' " *Best v. Taylor Machine Works,* 179 Ill.2d 367, 410 (1997), quoting *People v. Walker,* 119 Ill.2d 465, 473, (1988). It is the function of the judicial branch of government to determine what the law is and to apply statutes to cases. *Stern,* 179 Ill.2d at 168. Where, as in the case of the appellate court below, a court merely construes a statute and applies that statute to a specific set of facts, there is no violation of the separation of powers doctrine. See *Stern,* 179 Ill.2d at 168. We therefore conclude that defendant's separation of powers argument is without merit.

In her submission to this court, defendant also urges us to examine case decisions rendered outside of this jurisdiction for assistance in making our ruling today. Defendant places particular emphasis upon the decisions of the Supreme Court

of Kansas in *State Board of Nursing v. Ruebke,* 259 Kan. 599, 913 P.2d 142 (1996), and the Supreme Judicial Court of Massachusetts in *Leigh v. Board of Registration in Nursing,* 395 Mass. 670, 481 N.E.2d 1347 (1985). We have reviewed these opinions and conclude that they are factually inapposite to the matter at bar.

In *Ruebke,* the court affirmed the trial court's order denying a request by the Kansas State Board of Nursing for a preliminary injunction against the defendant, a lay midwife, from engaging in "healing arts" without a license. The *Ruebke* court determined that the definitional provisions of the regulatory statute at issue did not cover midwifery. The court held that, in their ordinary usage, the terms used to define "healing arts" within the statute "focus exclusively on pathologies (*i.e.,* diseases) and abnormal human conditions (*i.e.,* ailments, deformities or injuries)," and determined that "[p]regnancy and childbirth are neither pathologies nor abnormalities * * *." *Ruebke,* 259 Kan. at 615, 913 P.2d at 143. Unlike the narrow definition of "healing arts" contained within the Kansas statute, our Act defines "professional nursing" and "advanced practice nursing" in a broader manner. Based upon the differences in the relevant statutes, we find the *Ruebke* case inapposite.

In *Leigh,* a registered nurse had been suspended on the grounds that she had practiced midwifery without the authorization of the Massachusetts Board of Registration of Nursing in violation of a statute requiring her certification as a nurse midwife. The Supreme Judicial Court of Massachusetts held that, by being a registered nurse and practicing as a midwife without board authorization to

practice as a nurse in the expanded role of nurse midwife, Leigh violated the statute. *Leigh,* 395 Mass. at 677, 481 N.E.2d at 1347. In *dicta,*[2] the court went on to clarify that Leigh's position as a *nurse* practicing midwifery without certification constituted the statutory violation, and that it was not Leigh's practice of midwifery alone which violated the statute. The court, construing Massachusetts statutes which proscribe the unauthorized practice of medicine, concluded that simply assisting in normal cases of childbirth did not violate these statutes. *Leigh,* 395 Mass. at 680-81, 481 N.E.2d at 1353. We find that the decision in *Leigh* is factually distinguishable from the matter at bar and, accordingly, is inapposite.

In her written submission to this court, defendant also makes a brief, one-paragraph argument that by construing the Act to apply to her conduct during the Verzi birth, she is being denied her "liberty and property interest in her employment as a traditional midwife." We reject defendant's assertion. It is well settled that "every citizen has the right to pursue a trade, occupation, business or profession" and that "[t]his inalienable right constitutes both a property and liberty interest entitled to the protection of the law as guaranteed by the due process clauses of the Illinois and Federal constitutions." *Coldwell Banker Residential Real Estate Services of Illinois, Inc. v. Clayton,* 105 Ill.2d 389, 397 (1985). However, this constitutional right is not absolute;

2. The court noted that "[w]hile the question whether the practice of midwifery constitutes the unauthorized practice of medicine is not before us, we think it appropriate to comment briefly on the question, in light of the position of the parties." *Leigh,* 395 Mass. at 678, 481 N.E.2d at 1352-53.

it is "limited by the right of the State to regulate such freedom of action, through the proper exercise of the police power, where the public health, safety or welfare so requires." *Coldwell Banker,* 105 Ill.2d at 397. As stated, the regulation of nursing practice contained within the Act is designed to protect the health and safety of the public. Therefore, defendant's claim that the application of the Act to her conduct during the Verzi birth violates her liberty interest in her employment as a lay midwife lacks merit.

In sum, the General Assembly's intent to ensure the health, safety and welfare of the public by regulating the practice of nursing would be frustrated if the statute did not apply to the conduct of defendant at bar during the birth of Spencer Verzi. The public policy concerns which underpin the Act weigh in favor of regulating the conduct here as the delivery of a child affects both the mother's and child's well-being. The state has a substantial interest in promoting the general welfare, and whether a course chosen by the legislature to achieve a desired result is either wise or the best means available is not a proper subject of judicial inquiry. *Potts v. Illinois Department of Registration & Education,* 128 Ill.2d 322, 333 (1989). Although we understand plaintiff's concerns with respect to the continued existence of lay midwifery in Illinois, we are constrained to apply the law as enacted by the General Assembly. " 'Under the doctrine of the separation of powers, courts may not legislate, rewrite or extend legislation. If the statute as enacted seems to operate in certain cases unjustly or inappropriately, the appeal must be to the General Assembly, and not to the court.' " *Michigan Avenue National Bank,* 191 Ill.2d at 522, quoting *People v. Garner,* 147 Ill.2d 467, 475-76 (1992).

For the reasons stated above, we hold that plaintiff presented a *prima facie* case that defendant engaged in conduct which violated the Act. Accordingly, the circuit court erred in granting defendant's motion for a directed finding at the close of plaintiff's case.

## CONCLUSION

For the reasons stated, the judgment of the appellate court is affirmed.

*Affirmed.*

**APPENDIX B — OPINION OF THE APPELLATE COURT OF ILLINOIS FOR THE SECOND DISTRICT FILED JANUARY 28, 2002**

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

No. 00-CH-511

THE PEOPLE OF THE STATE OF ILLINOIS *ex rel.* LEONARD A. SHERMAN, Director of the Department of Professional Regulation,

Plaintiff-Appellant,

v.

YVONNE CRYNS,

Defendant-Appellee.

Appeal from the Circuit Court of McHenry County.

Honorable
Michael J. Sullivan,
Judge, Presiding.

JUSTICE BOWMAN delivered the opinion of the court:

In this interlocutory appeal plaintiff, the People of the State of Illinois *ex rel.* Leonard Sherman, Director of the Illinois Department of Professional Regulation, appeals from the judgment of the circuit court of McHenry County denying

its motion for a preliminary injunction against defendant, Yvonne Cryns. Plaintiff had sought to enjoin defendant from practicing nursing or midwifery without a license. On appeal plaintiff contends that the trial court erred (1) in directing a finding for defendant and denying plaintiff's request for preliminary injunction, and (2) in finding that it could not draw any negative inferences from defendant's refusal to testify under the fifth amendment (U.S. Const., amend. V).

Plaintiff filed a complaint for injunctive relief against defendant pursuant to section 20-75(a) of the Nursing and Advanced Practice Nursing Act (Act) ( 225 ILCS 65/20-75(a) (West 1998)). Section 20-75(a) provided that the Director of the Department of Professional Regulation (Director), in the name of the People of the State of Illinois, through the Attorney General of Illinois, may petition for an order enjoining a violation of the Act or for an order enforcing compliance with the Act. The complaint alleged that defendant violated a cease and desist order issued by the Director on April 7, 2000, ordering her to immediately cease and desist the practice of nursing and midwifery in Illinois until she complied with certain provisions of the Act pertaining to licensing as a nurse or advanced practice nurse. The complaint alleged that the violation occurred when defendant assisted with the birth of a baby, Spencer Verzi, at the Verzi home in Round Lake Beach on April 19, 2000.

Pursuant to plaintiff's complaint, the court entered a temporary restraining order against defendant and ordered a hearing to be held on plaintiff's motion for preliminary injunction. At the subsequent hearing on the motion, Louis Verzi, father of Spencer Verzi, testified regarding

the August 19, 2000, birth of his son. Verzi stated that he and his wife, Heather, had hired defendant to advise and assist them in delivering their baby at home. Verzi related that they had elected to have the baby at home as opposed to a hospital because of their alternative ideas regarding health care that were not shared by most doctors. According to Verzi, he and his wife did not believe that childbirth was a medical procedure but rather a natural human process. They did not want a doctor or a nurse to deliver their baby. Verzi stated that Heather's mother was their doctor, *i.e.*, that they relied on her advice regarding health issues.

Verzi stated that defendant understood their views and agreed to assist them in the water birth process that the Verzis chose as the method for giving birth to their child. The procedure involved giving birth while the mother was partially submerged in a birthing pool. Water birth was not available in any nearby hospitals. Verzi said that defendant never told his wife and him that she was present to act as a nurse nor did he believe that that was defendant's role.

During Heather's pregnancy, the couple met with defendant so she could "check up" on Heather and make certain her pregnancy was proceeding "okay." Three or four months into the pregnancy defendant used a Doppler, an instrument that monitors the baby's heartbeat. On other visits, at the Verzis' request, defendant used a fetoscope, a stethoscope device used to listen to the baby's heartbeat.

Verzi recalled that, about a couple of months before the birth of his son, defendant informed him that a cease and desist order existed against her. Defendant told the Verzis

that the order stated that she was not to assist in the delivery of babies. Verzi understood that this included the practice of midwifery. Verzi said that, regardless of the cease and desist order, he and his wife had come to trust defendant and still wanted her to assist in the delivery of their baby.

Verzi related that at about 10:30 a.m. on August 19, 2000, Heather's water broke. Defendant was called and arrived between 1 and 1:30 p.m. During the time she was at the Verzi home, defendant used the fetoscope four or five times. She also used a Doppler and an Ambu bag, or respiratory bag, after the baby was born.

At about 3:45 p.m. Heather began to give birth to Spencer. His left foot emerged first. Verzi recalled that at some point during the birthing process Heather asked defendant to pull out the baby. Defendant replied that she could not do that and instructed Heather to push out the baby because defendant did not know exactly what was right for the baby, but Heather's body would know the correct thing to do. Verzi stated that when matters became urgent, defendant attempted to extract the baby.

When Spencer was born, he had a heartbeat but was not breathing. Defendant used the Ambu bag to administer cardiovascular pulmonary resuscitation (CPR) to Spencer for approximately 10 minutes. When defendant's efforts to resuscitate the baby were unsuccessful, she asked those present to call 911. Defendant continued trying to resuscitate the baby until paramedics arrived. Verzi acknowledged that in electing to have a home birth he and his wife knew that

medical assistance was not immediately available if medical complications arose during the birth.

Verzi was asked if he had received a videotape of the events that occurred at his home on August 19, 2000. The videotape had been delivered to the Verzis by a police officer on the night before the instant proceedings and subsequently picked up by the officer after the couple had viewed it. Verzi acknowledged that the videotape truly and accurately portrayed the events that took place and the persons present on that date. Verzi stated that he was not responsible for the videotaping although he may have stopped the camcorder one or two times during the taping. According to Verzi, the camcorder was turned on and off frequently through the tape recording. The videotape was not played in court.

The State moved for the admission of the videotape, and defendant objected based on lack of foundation. The court commented that it believed that the videotape's admissibility depended upon whether someone testified that it was a true and accurate depiction of that which it portrayed. The court then found that the foundation for its admission was sufficient and admitted the videotape over defendant's objection.

The following description of what appears on the videotape is adopted in large part from the State's brief, which, from our review of the videotape, accurately depicts events that occurred during Spencer's birth. The videotape reveals that when Spencer began to be born he was in a breech position, *i.e.*, exiting the birth canal feet first. The baby's

left foot exited the birth canal first. The videotape shows that soon after the baby's foot appeared, defendant checked the baby's heartbeat with her fetoscope.

While Heather was laboring with only the baby's foot being born, defendant performed a digital examination on Heather's cervix to check that the cervix had fully dilated and that "there [wasn't] any more cervix in the way." After a few minutes she used her Doppler and fetoscope to again listen to the baby's heartbeat and instructed Heather to change positions to facilitate her examination. Heather labored for almost 20 minutes with only the baby's left foot being born. She complained of pain and asked defendant to help pull the baby out a little. Defendant refused and told Heather, "You know how much you can push the baby out. I don't know how much the baby should come out."

Shortly thereafter, the baby's right foot and bottom were born. With Heather's next push, the scrotum and part of the umbilical cord were visible outside the birth canal. Because it was apparent that the baby was a boy, Louis and Heather stated that the baby would be named Spencer Raymond Verzi.

A couple of minutes passed without any more of the baby being born, and defendant stated that she wanted to check on the health of the baby. Defendant used the Doppler to perform the examination. When she could not get a heartbeat for the baby, she instructed Heather to change positions and again listened with her equipment. Defendant still could not get a steady heartbeat and told Heather to "get the baby out" immediately.

*Appendix B*

Heather began pushing and defendant grabbed onto the part of the baby outside the birth canal. The water made it difficult to grab onto the baby and therefore defendant ordered Heather to stand up and get out of the birthing pool. Once Heather was on the rug, defendant tried to listen for the baby's heartbeat with the fetoscope but again could not get a steady beat. Defendant told Heather to "get this baby born." In the next series of pushes, the remainder of the baby's body was born except for his head, which remained in the vaginal canal. Defendant ordered Heather to push hard to get the head out. As Heather pushed, defendant inserted her fingers into the vaginal opening and worked to stretch and loosen the opening so that the baby's head could pass through it. Defendant also pulled and twisted the baby's torso and tried to manipulate him through the opening. As she did so, defendant ordered Heather to push and not to take any breaks. The baby's head exited the birth canal at approximately 4:30 p.m.

Spencer Verzi was unconscious upon birth. Defendant quickly rubbed a warm towel over him and began trying to resuscitate him. Defendant used her Ambu bag to push air into the baby's lungs. Approximately every minute thereafter, defendant stopped her resuscitation attempts to listen to the baby's heartbeat with the fetoscope. After using the Ambu bag for about 10 minutes, defendant tried mouth-to-mouth resuscitation. When that was unsuccessful, Cryns advised the Verzis to call 911.

In addition to Verzi, plaintiff called defendant as a witness. Plaintiff asked defendant whether she was certified as a midwife or licensed as a nurse in Illinois; whether a cease and desist order had been issued against her by the

Department of Professional Regulation; whether she was present and assisted in the delivery of Spencer Verzi in violation of the cease and desist order; whether she had been hired as a midwife by the Verzis and paid to assist in the birth of their baby; whether, after informing the Verzis that a cease and desist order had been entered against her, she informed them that no one else would take them on as a midwife at Heather's stage of pregnancy; and whether she told the Verzis after assisting in Spencer's birth that she should not be present and that they should not tell anyone that she was there. Defendant refused to answer these questions and every other question asked by the State, invoking her fifth amendment rights.

Plaintiff rested its case, and defendant moved for a directed finding, arguing that plaintiff had presented no evidence showing that any acts engaged in at the Verzi home on August 19, 2000, constituted acts of nursing or acts of advanced practice nursing. The trial court granted the motion, finding that plaintiff had not met its burden of proof in establishing a basis for a preliminary injunction. The court stated:

> "I am not a doctor. I am not a nurse. I am not the Department of Professional Regulation. I do not know what it is that—there is no evidence, there is no opinion that whatever occurred was the practice of nursing, the practice of midwifery, and I don't believe it is—at this point that they have established that there was a violation of a cease and desist order for the purpose of this Court to enter a preliminary injunction at this stage."

*Appendix B*

Plaintiff filed a timely notice of appeal from the trial court's decision. On May 7, 2001, this court issued its decision reversing the trial court's determination, finding that the trial court abused its discretion in ruling on plaintiff's request for a preliminary injunction without viewing the videotape entered into evidence. *People v. Cryns*, 321 Ill. App. 3d 990, 993 (2001). We vacated the trial court's order and remanded the cause for the court to consider all of the evidence offered at the preliminary injunction hearing, including the videotape. *Cryns*, 321 Ill. App. 3d at 993-94.

Upon remand and after reviewing both the videotape and the transcript of the hearing in their entirety, the trial court reaffirmed its decision to grant defendant's motion for a directed finding and to deny plaintiff's request for a preliminary injunction. The court again expressed its belief "that there is no evidence in the record, opinion evidence or other evidence, from which this Court could conclude that the activities of [defendant] constituted the practice of nursing or midwifery." According to the court, "any such conclusion based upon the record would be guess or speculation."

This appeal ensued.

Initially, we address the issue defendant has raised in her brief regarding the admissibility of the videotape, as our determination relies in part upon what appears upon that videotape. We note that defendant's raising of this issue does not require a cross-appeal. An appellee need not file a cross-appeal to preserve an argument ruled on adversely to the appellee in the trial court provided the court's judgment was

not, at least in part, against him. *In re Marriage of DeLarco*, 313 Ill. App. 3d 107, 108 (2000). Here, the judgment was not against defendant and, therefore, we may consider the merits of this issue she raises.

At trial defendant objected to the admission of the videotape based on plaintiff's failure to lay a proper foundation for the tape recording, arguing, in part, that whoever made the recording should testify. The court ruled adversely to defendant, stating that all that was needed was testimony by someone that the videotape was a true and accurate depiction of that which it portrayed. Louis Verzi had previously testified that the videotape truly and accurately portrayed the events that occurred at his home on August 19, 2000. As a result, the court found that the foundation for the videotape's admission was sufficient and admitted the videotape.

The decision to admit a videotape into evidence is solely within the trial judge's discretion (*Palumbo v. Kuiken*, 201 Ill. App. 3d 785, 791 (1990)) and will not be reversed absent an abuse of discretion (*Missouri Portland Cement Co. v. United Cement, Lime, Gypsum & Allied Workers International Union, Division of Boilermakers, AFL-CIO, Local No. 438*, 145 Ill. App. 3d 1023, 1027 (1986)). A videotape can be admitted if it is identified by a witness as a portrayal of certain facts relevant to a particular issue and is verified by that witness with personal knowledge as a correct representation of these facts. *Missouri Portland Cement Co.*, 145 Ill. App. 3d at 1027. "Verification may be furnished by the testimony of any competent witness who

has sufficient knowledge to testify that the videotape fully represents what it purports to portray." *Missouri Portland Cement Co.*, 145 Ill. App. 3d at 1027. The testimony of the cameraman is not necessary for the admission of the videotape into evidence. *Missouri Portland Cement Co.*, 145 Ill. App. 3d at 1027.

On appeal defendant contends that the trial court abused its discretion in admitting the videotape. Defendant maintains that, although Verzi testified that the videotape he watched at home on the night before the hearing depicted events that occurred during the labor and birth of his child, there was no verification at the hearing that the videotape admitted into evidence was the same one Verzi had viewed. Defendant argues that Verzi's testimony was insufficient to lay a foundation for the admission of the videotape offered at trial.

As plaintiff points out, however, defendant has failed to cite any authority stating that a videotape must be viewed at trial in order to establish a foundation for its admission into evidence. Moreover, we agree with plaintiff that defendant's suggestion that the videotape entered into evidence might not have been the same one Verzi saw is unsubstantiated, given the content of the tape. We have viewed the videotape in the record, and it clearly portrays the birth of Spencer Verzi. As plaintiff correctly states, the date and time of the birth are identified, as are defendant's presence and assistance in the birth.

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Verzi was a competent witness to identify the videotape as portraying the labor and birth of his child. As one present for the events that occurred on August 19, he possessed the personal knowledge to verify that the videotape constituted a correct representation of the events and the persons present. Accordingly, we conclude that the trial court did not abuse its discretion in admitting the videotape into evidence.

Defendant also complains of plaintiff's inclusion in the appendix of its brief of a shortened version of the original videotape containing short segments reproduced from that tape. Defendant argues that it is improper to introduce new evidence for the first time on appeal and to supplement the record with materials not considered by the trial court. Defendant's argument is meritless. While materials not taken from the record generally may not be placed before an appellate court by way of an appendix (*Hubeny v. Chairse*, 305 Ill. App. 3d 1038, 1042 (1999)), this is not what occurred here. The excerpts on the videotape in the appendix are taken from the original videotape, which the trial court did admit into evidence and did view. Therefore, the excerpts do not constitute new evidence or new materials not considered by the trial court.

Moreover, plaintiff is correct in its position that, pursuant to Supreme Court Rule 342(a), an appellant's brief is to include in its appendix "other materials from the record which are the basis of the appeal or pertinent to it" (155 Ill. 2d R. 342(a)). The portions of the original videotape that are included in the record are pertinent to plaintiff's appeal because they form the basis of its contention that defendant's assistance in delivering the Verzi baby constituted the practice

of nursing. Furthermore, we agree with plaintiff that copying five portions from the original videotape for inclusion in its appendix is comparable to copying pages of a trial transcript that form the basis of or are pertinent to an appellant's appeal. Consequently, we find nothing improper in the inclusion in plaintiff's appendix of a shortened videotape containing those segments pertinent to plaintiff's appeal.

Defendant also contends that it was improper for plaintiff to cite in its brief to specific places on the videotape that showed defendant performing certain actions during the delivery of the baby. However, the videotape constituted an exhibit that was admitted into evidence and, under Supreme Court Rules 341(e)(6) and (e)(7) (188 Ill. 2d Rs. 341(e)(6), (e)(7)), citation to it was proper. Defendant additionally maintains that it was improper for plaintiff to describe in its brief defendant's actions during the delivery because doing so was equivalent to testifying as a witness. We, however, find no merit to this argument. Stating what one believes a videotape shows is no different from expressing an opinion regarding what a photograph in evidence depicts. In each instance the opposing party can also express its opinion regarding the nature and content of the exhibit. But, as plaintiff points out, defendant has not expressed her views regarding what is depicted by the images relied upon by plaintiff. We conclude that plaintiff's reference to the videotape constitutes proper citation to the record in support of its argument.

Having concluded that the trial court's admission of the videotape was proper, we proceed to plaintiff's contention that the court erred in granting defendant's motion for

a directed finding at the conclusion of plaintiff's case in chief. Plaintiff maintains that, contrary to the trial court's determination, evidence was presented that defendant was practicing nursing or midwifery without a license on August 19, 2000, when she assisted in the delivery of the Verzi baby.

In a nonjury case the defendant may, at the close of the plaintiff's case, move for a finding or a judgment in his favor. 735 ILCS 5/2-1110 (West 1998). In ruling on such a motion, the trial court must follow a two-step analysis, first determining as a matter of law whether the plaintiff has made a *prima facie* case and entering a judgment for the defendant if the plaintiff has failed to do so. *Evans v. Gurnee Inns, Inc.*, 268 Ill. App. 3d 1098, 1102 (1994). If the court finds that the plaintiff has established a *prima facie* case, it must then weigh the evidence, including that which favors the defendant. *Orbeta v. Gomez*, 315 Ill. App. 3d 687, 690 (2000). After weighing the evidence, the court applies the standard of proof required for the underlying cause to determine whether sufficient proof remains to sustain the plaintiff's *prima facie* case. *Wehde v. Regional Transportation Authority*, 237 Ill. App. 3d 664, 676 (1992). If the court decides that evidence necessary to the plaintiff's *prima facie* case has been negated, the court should grant the motion for a directed finding and enter judgment for the defendant. *Orbeta*, 315 Ill. App. 3d at 690. The trial court's decision under the second part of this analysis will not be disturbed unless it is contrary to the manifest weight of the evidence. *Estate of Price v. Universal Casualty Co.*, 322 Ill. App. 3d 514, 517 (2001).

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In the present case the trial court decided only that plaintiff had failed to present *any* evidence that defendant was practicing nursing or midwifery in violation of the Nursing and Advanced Practice Nursing Act (225 ILCS 65/5-1 *et seq.* (West 1998)), *i.e.*, that plaintiff failed to establish a *prima facie* case as a matter of law. When a trial court determines that the plaintiff has failed to establish a *prima facie* case as a matter of law, the reviewing court must consider that determination under a *de novo* standard of review. *Zamarron v. Pucinski*, 282 Ill. App. 3d 354, 358 (1996).

To establish a *prima facie* case, the plaintiff must present at least some evidence on each element essential to its cause of action. *Elane v. St. Bernard Hospital*, 284 Ill. App. 3d 865, 872 (1996). Here, plaintiff was seeking a preliminary injunction against defendant. When a person is practicing nursing without a license in Illinois, the State possesses the statutory authority to petition the court for an injunction against that person. 225 ILCS 65/20-75 (West 1998). A statutory claim for injunctive relief need not satisfy the traditional principles of equity because it is based upon the presumption that public harm occurs when the statute is violated. *Midland Enterprises, Inc. v. City of Elmhurst*, 226 Ill. App. 3d 494, 504 (1993). Rather, the State is required to show only that the statute was violated and that the statute relied upon specifically allows injunctive relief. *Midland Enterprises*, 226 Ill. App. 3d at 504. In the present case, plaintiff made a *prima facie* case that defendant was practicing nursing or midwifery without a license through the testimony of Louis Verzi as well as the videotape admitted into evidence.

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Because the practice of nursing affects the public health, safety, and welfare of Illinois citizens, the legislature enacted the Nursing and Advanced Practice Nursing Act to regulate and control the practice. 225 ILCS 65/5-5 (West 1998). In carrying out its purpose, the Act is to be liberally construed. 225 ILCS 65/5-5 (West 1998). Under the Act "any person practicing or offering to practice professional and practical nursing in Illinois shall submit evidence that he or she is qualified to practice, and shall be licensed as provided under the Act." 225 ILCS 65/5-15 (West 1998). The Act further provides that "[n]o person shall practice or offer to practice professional or practical nursing in Illinois or use any title, sign, card or device to indicate that such a person is practicing professional or practical nursing unless such person has been licensed under the provisions of this Act." 225 ILCS 65/5-15 (West 1998).

Pursuant to section 5-10(l) of the Act, "[r]egistered professional nursing practice" includes, in pertinent part:

> "all nursing specialities and means the performance of any nursing act based upon professional knowledge, judgment, and skills acquired by means of completion of an approved registered professional nursing education program. A registered professional nurse provides nursing care emphasizing the importance of the whole and the interdependence of its parts through the nursing process to individuals, groups, families, or communities, that includes but is not limited to: (1) the assessment of healthcare needs, nursing diagnosis, planning,

> implementation, and nursing evaluation; (2) the promotion, maintenance, and restoration of health; (3) counseling, patient education, health education, and patient advocacy." 225 ILCS 65/5-10(l) (West 1998).

A nurse specializing in the delivery of babies is referred to as a certified nurse midwife in the Act and is categorized as an "[a]dvanced practice nurse" (225 ILCS 65/15-5 (West 1998)). An advanced practice nurse is an individual licensed as a registered professional nurse under the Act. 225 ILCS 65/15-5 (West 1998). A certified nurse midwife must work in collaboration with a licensed physician. 225 ILCS 65/15-5 (West 1998). Once a midwife has satisfied the foregoing requirements, she can care for patients by using "medical, therapeutic, and corrective measures to treat illness and improve health status." 225 ILCS 65/15-5 (West 1998).

In the present case Louis Verzi testified that he and his wife, Heather, had hired and paid defendant to advise and assist them in delivering their baby at home. According to Verzi, they had not wanted a doctor or nurse to deliver their baby. At some point during Heather's pregnancy the couple learned that a cease and desist order had been issued against defendant, precluding her from assisting in the delivery of babies. It was Verzi's understanding that defendant was told not to practice midwifery. According to Verzi, he did not know specifically what the term "midwifery" meant. Nonetheless, midwifery is defined as "the art or act of assisting at childbirth" (Webster's Third New International Dictionary 1432 (1993)), and, clearly, it was for this purpose, as testified to by Verzi, that he and his wife had hired

defendant. Moreover, that defendant was hired by the Verzis as a midwife is evident from the videotape. On the videotape defendant's arrival at the Verzi home is announced as "Yvonne, the midwife, has arrived."

The videotape reveals that, as Heather began to give birth to the baby's foot, defendant stated that she wanted to examine Heather to make certain that there was no more cervix remaining in the vaginal canal to block the baby's passage. Defendant then performed a digital examination to determine if Heather was fully dilated. During Heather's labor, defendant checked the baby's heart rate on several occasions in utero, *i.e.*, while the baby was still in the uterus, using a fetoscope. Also, during Heather's labor, particularly after the lower half of the baby had been born, defendant used a device called a Doppler that she placed on Heather's stomach to monitor the baby's heartbeat.

Following one of defendant's checks with the Doppler, she ordered Heather out of the birthing pool and onto the rug, arranged her labor position, and repeatedly instructed her to "get this baby born." The videotape reveals that defendant used her fingers to stretch the vaginal opening to try to ease the baby's passage and both pulled and twisted the baby to manipulate him through the vaginal canal. Once the child was born, defendant cleaned him with a towel and began using her Ambu bag to push air into his lungs. The tape shows that about every minute thereafter defendant stopped her resuscitation efforts to listen to the baby's heartbeat with her fetoscope. After approximately 10 minutes of trying to resuscitate him with the Ambu bag, defendant tried mouth-to-mouth resuscitation. When this was

unsuccessful, she advised the Verzis to call 911. She then reminded the Verzis that she was not supposed to be present and that they had previously discussed this fact. She asked that they not tell anyone that she had been assisting in the baby's delivery and asked that they hide her medical instruments.

Defendant's foregoing comments demonstrate that she knew her participation in Spencer's birth violated the Act. Moreover, her conduct during and after Heather's labor evidenced that she was practicing nursing or midwifery. We agree with plaintiff that, in checking Heather's cervix to determine if she was fully dilated and in checking the baby's heartbeat in utero with her fetoscope, defendant was assessing both Heather's and the baby's "healthcare needs" and making "nursing evaluation[s]" in violation of section 5-10(1) of the Act (225 ILCS 65/5-10(l) (West 1998)). Furthermore, defendant's attempts to promote, maintain, and restore Spencer's health when she pulled and twisted him through the vaginal opening and tried to resuscitate him after his birth also constituted additional violations of section 5-10(1) (225 ILCS 65/5-10(l) (West 1998)). These same actions constituted "corrective measures" to improve his health status and were further violations of the Act (225 ILCS 65/15-5 (West 1998)).

Also, we note that defendant's conduct in stretching Heather's vaginal opening with her hands to ease the passage of the baby's head through the opening and then pulling and twisting the baby's torso to manipulate him through the opening constituted more than mere "assisting" at childbirth.

Rather, in physically removing or extracting the baby's head from the vaginal canal, defendant was participating in the actual delivery of the baby.

The Act sets forth the activities that the legislature considers to constitute the practice of nursing. See 225 ILCS 65/5-10(l); 15-5 (West 1998). Additionally, the Act provides courts with the power to enjoin individuals who engage in these activities without the proper license. 225 ILCS 65/20-75(a) (West 1998). The videotape and Louis Verzi's testimony constituted sufficient evidence to establish a *prima facie* case that on August 19, 2000, defendant performed certain acts that constituted the practice of nursing and that, therefore, were prohibited for an individual without a nursing license. In our view, no "guess or speculation," as stated by the trial court in reaching its decision, was necessary on the trial court's part to reach such a conclusion. The Act "gives adequate notice of what duties a person without a nursing license is unable to perform" (*People v. Stults*, 291 Ill. App. 3d 71, 84 (1997)).

In *Stults* this court made the foregoing finding regarding section 3 of the former Illinois Nursing Act of 1987 (225 ILCS 65/3(1) (West 1996)). Subsequently, that provision became section 5-10(l) of the Nursing and Advanced Practice Nursing Act (225 ILCS 65/5-10(l) (West 2000)). The two provisions are similar, but section 5-10(l) is more definitive than the former provision. As a result, it provides more than "adequate" notice regarding the acts an individual without a nursing license cannot perform. Thus, the trial court could have applied the statute to defendant's actions to determine whether those actions constituted nursing.

We conclude that the trial court erred in finding that plaintiff presented no evidence from which the court could conclude that defendant's activities constituted the practice of nursing or midwifery. Plaintiff established a *prima facie* case that defendant was practicing nursing or midwifery without a license and, consequently, the trial court erred in granting defendant's motion for a directed finding.

Plaintiff also raises the contention on appeal that the trial court erred in finding that it could not draw any negative inferences from defendant's refusal to testify under the fifth amendment. Plaintiff asserts that the fifth amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them. However, this principle of law is not dispositive here. The record reveals that a criminal case was pending against defendant in Lake County, where Spencer Verzi's birth occurred. Thus, the danger existed that defendant's answers to plaintiff's questions could be used against her in her pending criminal case.

The purpose of the self-incrimination clause contained in the fifth amendment is to protect a witness from prosecution and punishment based on his own testimony. *People v. James*, 304 Ill. App. 3d 52, 59 (1999). "The privilege against self-incrimination may be invoked in any proceeding, civil or criminal, in which the witness reasonably believes that the information sought, or discoverable as a result of his testimony, could be used in a subsequent criminal proceeding against him." *Relsolelo v. Fisk*, 317 Ill. App. 3d 798, 802 (2000). At the time of the hearing on plaintiff's motion for a preliminary injunction, the trial court was aware that there was a criminal case pending against defendant.

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When plaintiff called defendant at the hearing, plaintiff asked defendant questions aimed at obtaining information regarding whether she was certified as a midwife or licensed as a nurse; whether she had been hired and paid by the Verzis to assist as a midwife in the delivery of their baby; whether she was present and assisted in the delivery of Spencer Verzi in violation of the cease and desist order issued against her by the Department of Professional Regulation; and whether, after assisting in Spencer's birth, she told the Verzis that they should not tell anyone she was there because she should not have been present. Clearly, such questions compelled defendant to be a witness against herself in violation of the fifth amendment because the answers to the questions could be used in the criminal proceeding pending against her. In this instance, therefore, where defendant's answers might have incriminated her in future criminal proceedings, the trial court did not err in finding that it could not draw any negative inferences from defendant's invocation of her fifth-amendment privilege against self-incrimination in the present civil proceeding. See *Relsolelo*, 317 Ill. App. 3d at 802.

Based on the reasons given above, we reverse the judgment of the circuit court of McHenry County denying plaintiff's preliminary injunction by granting a directed finding in defendant's favor at the close of plaintiff's case in chief and remand the cause for further proceedings.

Reversed and remanded.

McLAREN and GROMETER, JJ., concur.

## APPENDIX C — EXCERPTS OF TRANSCRIPT OF HEARING BEFORE JUDGE MICHAEL J. SULLIVAN DATED OCTOBER 13, 2000

THE CIRCUIT COURT
FOR THE 19TH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

00 CH 511

PEOPLE OF THE STATE OF ILLINOIS EX REL., LEONARD A. SHERMAN, DIRECTOR OF THE ILLINOIS DEPARTMENT OF PROFESSIONAL REGULATION,

Plaintiff;

-vs-

YVONNE CRYNS,

Defendant.

* * *

[Commencing page 66]

* * *

THE COURT: The matter is here today on first of all there was a verified complaint for injunctive and other relief filed on October 3rd of the year 2000, and more specifically, I believe there was a petition for a temporary

restraining order also filed which the Court granted and the matter was continued to today for hearing on the preliminary injunction.

This other issue in this case as the Court understands it is an order to cease and desist that was entered on April 7, 2000 by the Department of Professional Regulation of the State of Illinois and executed in the official capacity by Leonard A. Sherman, director, which reads: This matter having come before the director of the Department of Professional Regulation on a rule to show cause issued January 5, 2000 having respondent having filed an affidavit attached as Exhibit A now, [67] therefore, I, Leonard A. Sherman, director of the Department of Professional Regulation of the State of Illinois after due deliberation find and then under 1, Respondent is not registered as a licensed practical nurse or a registered professional nurse in the State of Illinois pursuant to Section 10-5 of the Illinois Nursing and Advanced Practice Act, 225, Illinois Compiled Statutes 1992, 65/10-5 A, B or C.

Respondent — No. 2, Respondent does not hold a current, national certificate as a nurse, midwife from the appropriate national certifying body as determined by rule by the Department.

3, Respondent has not complied with a post-basic advanced practical form — practice formal education program in the area of midwifery.

4, that — 4, Respondent does not have a collaborative agreement with a collaborating physician.

5, Respondent has been practicing midwifery without the appropriate license and certificate in the State of Illinois.

It is, therefore, ordered that Yvonne Cryns immediately cease and desist the practice of nursing and the practice of midwifery in the State of [68] Illinois until such time as you have complied with the provisions of 225, Illinois complied (1992), 65/10-5 A, B and C 65/15-5; 65/15-10 and the rules and regulations promulgated for the administration of said Act. Then it's dated and signed by the director as I indicated.

We also have noted in the verified complaint under Paragraph 14 must be — its section it says 20-75 A of the Act. It doesn't say what act, but I assume it's the Nursing Practices Act probably is what they are referring to. In any event, it quoted in pertinent part, "If any person violates the provisions of this Act, the director may in the name of the People of the State of Illinois through the Attorney General of the State of Illinois or the State's attorney of any county in which action is brought petition for an order enjoining such violation or for an order enforcing compliance with the Act. Upon filing the verified petition in court, the Court may issue a temporary restraining order without notice, bond and may preliminary — and permanently enjoin such violations, et cetera."

*Appendix C*

We are here for purposes of today a preliminary injunction. We are here at this point [69] on a motion for a directed finding at the close of the People's case. For the Court to enter a preliminary injunction, the parties seeking to establish the injunction or have one proceed must show that it possesses a certain and clear ascertainable right, that it will suffer irreparable injury if the injunction — injunctive relief is not denied and that it lacks adequately — adequate remedy at law, and also there is the factor of likelihood of success on the merits.

There are apparently at least two other areas of litigation involving the defendant. One in a criminal matter in another county and another, I believe it's an administrative review and declaratory judgment action, pending in this court with reference to the regulatory proceedings.

In this case, the issue before the Court really is whether or not the People have established a basis for a preliminary injunction, and I think the Court is looking at again Section 20-75 A which indicates that the director through the Attorney General or the State's attorney may petition the Court to enjoin a violation or for an order enforcing compliance with the Act.

[70] It seems to me that the statute requires that they establish a violation. We have evidence that I believe the date was August 19th of this year that an event or series of events occurred at the home of the Verzis in which there was a — Mrs. Verzi was apparently in the process of what is I use in a lay term labor.

*Appendix C*

There has been testimony of — Mr. Verzi presented. There has been the videotape introduced of the activities of what occurred on that date and also the defendant, Ms. Cryns, was called and she exercised her right as she has under the Fifth Amendment which the Court cannot use in any kind of a negative way concerning the matter.

The Court believes that for purposes of this today, petition for a preliminary injunction — and I am dealing only with that. I am not dealing with the underlying complaint for permanent injunction, but for today, the State has not met its burden, and the reason I say that is that there is no — and I agree with counsel for the defendant.

I am not a doctor. I am not a nurse. I am not the Department of Professional Regulation. I do not know what it is that — there is no evidence, [71] there is no opinion that whatever occurred was the practice of nursing, the practice of midwifery, and I don't believe it is — at this point that they have established that there was a violation of the cease and desist order for the purpose for this Court to enter a preliminary injunction at this stage.

Whether they can establish that at another point, I don't know, but the evidence presented today is not sufficient to do that so I would grant the motion for a directed finding at this point.

MR. HARRISON: Judge, we also ask that the temporary restraining order also be dissolved.

THE COURT: It may be dissolved.

MR. HARRISON: Thank you, Judge. I will draft an order.

THE COURT: Do you wish to leave the videotape into evidence or do you wish to withdraw it? I mean, you have the right to appeal a Court's order in terms of granting or denying an injunction. I don't know if you want it or not. It's just up — If you don't want it — If you want the Court to keep it, we will. If you want it back, you can have it back.

[72] MS. CARMICHAEL: We're keeping it in for now.

THE COURT: All right.

MS. CARMICHAEL: Your Honor, we'd like to move for a stay of your motion pending appeal.

MR. HARRISON: Judge, there is no immediate appeal from denial of an injunction.

THE COURT: I believe there is.

MR. HARRISON: Is there now?

THE COURT: Let's look. I believe there is under —

MR. HARRISON: I withdraw that, Judge. My co-counsel has educated me as well. Judge, we would also object to the stay of any order in this matter which is in effect giving them an injunction when it's been determined —

THE COURT: I don't know. Rule 307 A, other appealable orders. An appeal may be taken to the Appellate Court from any interlocutory order of the Court granting, modifying, refusing, dissolving or refusing to dissolve or modify an injunction.

That is an interlocutory appeal. As of right — I would over objection grant the motion to stay pending resolution in the Appellate Court or until you can request that they lift it, all right?

[73] Court stands in recess.

MR. HARRISON: Thank you, Judge.

MS. GALLAGHER: Thank you, your Honor.

MS. CARMICHAEL: Thank you, your Honor.

## APPENDIX D — RELEVANT STATUTES

NURSING AND ADVANCED PRACTICE NURSING ACT
225 ILCS 65/5 et seq.

In relevant part, the NAPNA states:

225 ILCS 65/5-10 Definitions.

(l) "Registered professional nursing practice" includes all nursing specialties and means the performance of any nursing act based upon professional knowledge, judgment, and skills acquired by means of completion of an approved registered professional nursing education program. A registered professional nurse provides nursing care emphasizing the importance of the whole and the interdependence of its parts through the nursing process to individuals, groups, families, or communities, that includes but is not limited to:

(1) the assessment of healthcare needs, nursing diagnosis, planning, implementation, and nursing evaluation;

(2) the promotion, maintenance, and restoration of health;

(3) counseling, patient education, health education, and patient advocacy;

* * *

*Appendix D*

225 ILCS 65/5-15 Policy; application of Act ***

This Act does not prohibit the following: ***

(c) The furnishing of nursing assistance in an emergency.

* * *

225 ILCS 65/5-20 Unlicensed practice; violation; civil penalty

(a) Any person who practices, offers to practice, attempts to practice, or holds oneself out to practice nursing without being licensed under this Act shall, in addition to any other penalty provided by law, pay a civil penalty to the Department in an amount not to exceed $5,000 for each offense as determined by the Department. ***

* * *

*Appendix D*

225 ILCS 65/10-5 Prohibited acts: No person shall:

> (a) Practice professional nursing without a valid license as a registered professional nurse except as provided in paragraphs (i) and (j) of Section 5-15 of this Act;
>
> * * *
>
> (o) Otherwise intentionally violate any provision of this Act.

Any person, including a firm, association or corporation who violates any provision of this Section shall be guilty of a Class A misdemeanor.

225 ILCS 65/15-5 Definitions of Advanced practice nurse.

"Advanced practice nurse" means a person who:

(1) is licensed as a registered professional nurse under this Act;

(2) meets the requirements for licensure as an advanced practice nurse under Section 15-10;

(3) except as provided in Section 15-25, has a written collaborative agreement with a collaborating physician in the diagnosis of illness and her practice in accordance with Section 15-15; ***and***

*Appendix D*

(4) cares for patients

(A) by using advanced diagnostic skills, the results of diagnostic tests and procedures ordered by the advanced practice nurse ***;

(B) by ordering diagnostic tests, prescribing medications and drugs in accordance with Section 15-20, and administering medications and drugs; ***and***

(C) by using medical, therapeutic, and corrective measures to treat illness and improve health status.

Categories include certified nurse midwife (CNM) ***

* * * *